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Oxford Electronics, Inc., d/b/a Oxford Airport Technical Services and Worldwide Flight Services, Inc., Joint employers, and Oxford Electronics, Inc., d/b/a Oxford Airport Technical Services and Total Facility Maintenance, Inc., joint employers, and Oxford Electronics, Inc., d/b/a Oxford Airport Technical Services and Twin Staffing, Inc., Joint Employers

International Union of Operating Engineers Local 399, AFL-CIO and Transportation Workers Union of America—Local 504, AFL-CIO (Oxford Electronics, Inc. d/b/a Oxford Airport Technical Services, Worldwide Flight Services, Inc., Total Facility Maintenance, Inc., and Twin Staffing, Inc.) and International Union of Operating Engineers Local 399, AFL-CIO. Cases 13-CA-115933 and 13-CB-115935

January 6, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

On May 31, 2017, Administrative Law Judge Kimberly R. Sorg-Graves issued the attached decision. Respondents Oxford Electronics, Inc. d/b/a Oxford Airport Technical Services (Oxford) and Worldwide Flight Services, Inc. (Worldwide) filed exceptions and a supporting brief; Respondents Total Facility Maintenance, Inc. (Total) and Twin Staffing, Inc. (Twin) filed exceptions and a supporting brief; Respondent Transportation Workers of America—Local 504, AFL-CIO (Local 504) filed exceptions; and Charging Party International Union of Operating Engineers Local 399, AFL-CIO (Local 399) filed exceptions. Local 399 and the General Counsel filed answering briefs to the Respondents' exceptions, and Respondents Oxford and Worldwide filed a reply. The General Counsel filed cross-exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.¹

¹ Respondents Oxford and Worldwide have requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

A threshold issue in these cases is whether the Employer Respondents' operations and employees at Chicago's O'Hare International Airport (O'Hare) are subject to the Railway Labor Act (RLA) or to the National Labor Relations Act (the Act).² The Administrative Law Judge concluded that the Respondents' O'Hare operations are subject to the Act and that the Employer and Union Respondents violated the Act in various respects as alleged by the General Counsel. The Board subsequently requested that the National Mediation Board (NMB), which administers the RLA, review the record, including the judge's decision, and provide an opinion as to whether the NMB has jurisdiction over the Respondents. On August 30, 2019, the NMB issued an advisory opinion stating its view that the Respondents' O'Hare operations are subject to the RLA. *Oxford Electronics, Inc./Worldwide Flight Services, Inc./Total Facility Maintenance, Inc./Twin Staffing Inc.*, 46 NMB 71 (2019) (*Oxford Electronics*). For the reasons discussed below, we agree. We therefore dismiss the consolidated complaint.

Background

Section 2(2) and (3) of the Act exclude "person[s] subject to the Railway Labor Act" and their employees from the Board's jurisdiction. Persons subject to the RLA, in turn, include, in relevant part, "every common carrier by air engaged in interstate or foreign commerce," and "any company which is directly or indirectly owned or controlled by or under common control with any carrier . . . and which operates any equipment or facilities or performs any service (other than trucking service) in connection with" air transportation. 45 U.S.C. §§ 151 First and 181; see also *ABM Onsite Services-West, Inc. v. NLRB*, 849 F.3d 1137, 1139–1140 (D.C. Cir. 2017).

When an employer is not itself a carrier, the NMB applies a two-part test to determine whether that agency nonetheless has jurisdiction over the employer. First, the NMB determines whether the work the employer performs is traditionally performed by carrier employees. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be met for the NMB to assert jurisdiction. See, e.g., *Air Serv Corp.*, 33 NMB 272, 285 (2006). In determining whether the second part of the test is satisfied, the NMB holds that "the . . . carrier must effectively exercise a significant degree of influence over the com-

² The General Counsel's allegations involving the Union Respondent in Case 13-CB-115935 also turn on which law governs the Employer Respondents' operations. "Respondents" hereinafter refers to the Employer Respondents unless otherwise noted.

pany's daily operations and its employees' performance of services in order to establish RLA jurisdiction." *ABM Onsite Services-West*, 45 NMB 27, 34 (2018). Factors the NMB has traditionally considered in making this latter determination include (1) the extent of the carrier's control over the manner in which the company conducts its business, (2) the carrier's access to the company's operations and records, (3) the carrier's role in the company's personnel decisions, (4) the degree of carrier supervision of the company's employees, (5) whether company employees are held out to the public as carrier employees, and (6) the extent of carrier control over employee training. No one factor is elevated above all others. *Id.* at 34–35.

In determining whether Section 2(2) and (3) of the Act preclude the Board from exercising jurisdiction over an employer, the Board gives "substantial deference" to NMB advisory opinions regarding RLA jurisdiction. See, e.g., *DHL Worldwide Express*, 340 NLRB 1034, 1034 (2003). However, there is no statutory requirement that the Board refer a case to the NMB for an advisory opinion prior to asserting jurisdiction, and the Board's longstanding practice has been to assert jurisdiction without referral in several circumstances, including where jurisdictional issues arise in a factual situation similar to one in which the NMB has previously declined jurisdiction. See, e.g., *Spartan Aviation Industries*, 337 NLRB 708, 708 (2002); see also *United Parcel Service, Inc. v. NLRB*, 92 F.3d 1221, 1224–1226 (D.C. Cir. 1996) (discussing Board's historic referral practices), *enfg.* 318 NLRB 778 (1995).

Procedural History

The consortium of air carriers that operated O'Hare's international terminal at times relevant to this case—known as CICA TEC³—contracted with noncarrier companies to operate, maintain, and repair mechanical baggage conveyor systems and passenger boarding bridges. Until June 30, 2013, Charging Party Local 399 represented a unit of dispatchers, mechanics, helpers, and encoders⁴ employed by ABM Engineering Services (ABM) under a contract between ABM and CICA TEC. On June 30, 2013, CICA TEC replaced ABM with Respondent Oxford. Oxford is a wholly owned subsidiary of Respondent Worldwide. Oxford subcontracted the dispatcher, mechanic, and helper work to Worldwide and

the encoder work to Respondents Total and Twin. Worldwide has a long history of bargaining with Union Respondent Local 504 under the RLA as the representative of its employees at other airports. Beginning in October 2012, in anticipation of the contract change, Oxford and Worldwide informed employees of ABM previously represented by Local 399 that continued employment after Oxford took over the contract would be contingent on their joining Local 504 and becoming subject to the terms of Local 504's system-wide contract with Worldwide under the RLA. Oxford required Total and Twin to enter into contracts with Local 504 incorporating the terms of Local 504's contract with Worldwide, including by requiring encoders employed by Total and Twin to become dues-paying members of Local 504.

On October 29, 2013, Local 399 filed the initial charges in these cases, alleging, in sum, that the Employer and Union Respondents' conduct unlawfully interfered with employees' rights under Section 7 of the Act to bargain collectively through Local 399 as their chosen representative. Around January 2014, the General Counsel requested an opinion from the NMB whether the Respondents' O'Hare operations were subject to the RLA.

During 2013 and 2014, the NMB issued a series of advisory opinions that placed increased emphasis on the third of its six traditional factors for assessing carrier control—the extent of the carrier's control over the employer's personnel decisions (particularly discipline and discharge)—and declined to assert jurisdiction where such evidence was lacking.⁵ The Board followed suit, in keeping with its policy to grant substantial deference to NMB advisory opinions regarding RLA jurisdiction. Thus, the Board asserted jurisdiction in cases where the NMB declined to do so under its revised test. See, e.g., *Airway Cleaners, LLC*, 362 NLRB 760, 760 fn. 2 (2015). In addition, consistent with its longstanding practice, the Board asserted jurisdiction, without referral, in cases that were factually similar to cases in which the NMB had declined jurisdiction. See, e.g., *ABM Onsite Services-West, Inc.*, 362 NLRB No. 179, slip op. at 1 (2015), vacated and remanded 849 F.3d 1137 (D.C. Cir. 2017); *Allied Aviation Service Co. of New Jersey*, 362 NLRB 1392, 1392 (2015), *enfd.* 854 F.3d 55 (D.C. Cir. 2017), *cert. denied* 138 S. Ct. 458 (2017).

Early in 2015, without having received a jurisdictional opinion from the NMB in the instant case, the General Counsel withdrew his request for an opinion and re-

³ The full name of CICA-TEC was The Chicago International Carriers' Association Terminal Equipment Corporation. The NMB found that, on May 12, 2018, CICA TEC expanded and changed its name to the Chicago Airline Terminal Consortium (CATCo). *Oxford Electronics*, 46 NMB at 72 fn. 2.

⁴ Encoders electronically sort and direct baggage through the conveyor system.

⁵ See *Huntleigh USA Corp.*, 40 NMB 130 (2013); *Aero Port Services, Inc.*, 40 NMB 139 (2013); *Bags, Inc.*, 40 NMB 165 (2014); *Airway Cleaners, LLC*, 41 NMB 262 (2014); *Menzies Aviation, Inc.*, 42 NMB 1 (2014); see generally *ABM Onsite Services-West, Inc. v. NLRB*, 849 F.3d at 1144–1145 (discussing shift in NMB's analysis).

sumed processing the charges. Ultimately, the General Counsel issued a consolidated complaint. The administrative law judge conducted an evidentiary hearing on the complaint allegations in January 2017.

On March 7, 2017, while this case was pending before the administrative law judge, the United States Court of Appeals for the District of Columbia Circuit issued its decision in *ABM Onsite Services-West, Inc. v. NLRB*, in which it criticized post-2013 NMB and Board decisions as an unexplained departure from longstanding precedent. 849 F.3d at 1144–1146. On May 31, 2017, the judge issued her decision in the instant case. The judge’s decision acknowledged the court’s criticism but nevertheless concluded that the Board had jurisdiction under then-controlling Board precedent and the NMB’s post-2013 decisions. The Respondents filed timely exceptions to the judge’s decision, arguing, inter alia, that their O’Hare operations were subject to the RLA.

On May 18, 2017, while the Respondents’ exceptions were pending before the Board, the Board responded to the court’s remand of *ABM Onsite Services*, supra, by requesting that the NMB study the record in that case in light of the court’s decision and determine the applicability of the RLA to the employer’s operations at issue in that case. On February 23, 2018, the Board similarly requested that the NMB review the record in this case in light of the court’s decision in *ABM Onsite Services* and provide an opinion as to whether the NMB has jurisdiction over the Respondents’ O’Hare operations. On February 26, 2018, the NMB issued an advisory opinion in *ABM Onsite Services*, reaffirming its traditional six-factor carrier control test in which “[n]o one factor is elevated above all others” and overruling cases requiring carrier control over personnel decisions, including those relied upon by the administrative law judge in the instant case. 45 NMB 27, 34–35 & fn. 2 (2018). Consistent with the Board’s policy of giving substantial deference to the NMB’s advisory opinions, the Board deferred to the NMB’s opinion and found that the record in that case supported the NMB’s assertion of RLA jurisdiction under the traditional six-factor carrier control test. *ABM Onsite Services-West*, 367 NLRB No. 35 (2018). Finally, on August 30, 2019, the NMB issued an advisory opinion in which it applied its traditional six-factor carrier control test to the facts here and found that the Respondents’ operations at O’Hare are subject to the RLA. *Oxford Electronics*, 46 NMB at 71.

In light of the NMB’s decision to overrule cases the administrative law judge relied upon in finding Board jurisdiction, the Board’s supplementary decision reversing course in *ABM Onsite Services-West*, and the NMB’s advisory opinion asserting jurisdiction over the Respond-

ents’ O’Hare operations, we find merit in the Respondents’ exceptions to the judge’s finding of NLRA jurisdiction.⁶

Discussion

Having received the NMB’s advisory opinion, we will give it the substantial deference the Board ordinarily accords such opinions. See *DHL Worldwide Express*, supra. Considering the record in light of the NMB’s opinion, we find that the Respondents’ dispatchers, mechanics, helpers, and encoders at O’Hare perform work that has traditionally been performed by air carrier employees, and that, during the relevant time period, CICA TEC effectively exercised a significant degree of influence over the Respondents’ daily operations and their employees’ performance of services at O’Hare, establishing RLA jurisdiction under the NMB’s traditional six-factor carrier control test.

Under the first factor of the carrier control test, the record supports the NMB’s determination that CICA TEC exercised a significant degree of control over the manner in which the Respondents conducted their day-to-day operations. CICA TEC required Oxford to perform specific enumerated tasks and such other tasks as CICA TEC directed on a 24-hour-a-day / 7-day-a-week basis, and CICA TEC’s contract with Oxford gave CICA TEC the authority to manage, monitor, and coordinate Oxford’s performance. CICA TEC imposed certain requirements pertaining to gate procedures, bag room procedures, and severe weather operations on the Respondents’ employees. CICA TEC representatives met with Oxford regularly and frequently to discuss areas of concern, request performance of specific work, follow up on information contained in various work reports, or ask for updates. CICA TEC also sometimes directed Oxford to ensure that Worldwide employees performed certain tasks, or to adjust the staffing levels of Worldwide employees in specific areas. Moreover, individual airline members of CICA TEC sometimes directly informed Oxford or Worldwide of mechanical problems, which Oxford and Worldwide then directly addressed. Finally, in accordance with requirements imposed by the City of Chicago, CICA TEC’s contract required Oxford to ensure that certain percentages of the contracted work be performed by unionized employees, a “minority business enterprise” (MBE), and a “woman business enterprise” (WBE). Oxford complied with these requirements by

⁶ The judge’s additional reliance on the Board’s decision in *Allied Aviation Services Co. of New Jersey*, supra, does not support a different course because the Board there found that NLRA jurisdiction would lie under either the NMB’s pre- or post-2013 precedent. See *Allied Aviation Services Co. of New Jersey v. NLRB*, 854 F.3d 55, 63 (D.C. Cir. 2017), enfg. 362 NLRB 1392 (2015).

subcontracting work to Worldwide (with the understanding that Worldwide's existing contract with Local 504 would apply to its operations and employees at O'Hare) and to Total (an MBE) and Twin (a WBE).

There is also substantial record support for the NMB's determination that the second carrier control factor weighs in favor of RLA jurisdiction because CICA TEC had significant access to the Respondents' operations and records. The Respondents provided CICA TEC and individual airlines with extensive formal and informal operations reports on a daily, weekly, and monthly basis, and they regularly followed up on inquiries about information contained in such reports. In addition, CICA TEC's contract with Oxford provided that CICA TEC owned all documents prepared or used under the contract. CICA TEC also provided office space to Oxford's operations manager, Robert Jensen.

Finally, the record supports the NMB's determination that the third carrier control factor, CICA TEC's role in the Respondents' personnel decisions, also supports a finding of RLA jurisdiction.⁷ The CICA TEC-Oxford contract authorized CICA TEC to approve Oxford's selection of a project manager, and CICA TEC exercised that authority by approving Oxford's selection of Jensen for that role. CICA TEC also effectively recommended that Oxford hire a particular individual as a supervisor, and it requested and received increased staffing by Worldwide employees in one work area. The contract further provided that all employees would be paid not less often than monthly, and it reserved to CICA TEC the right to remove any personnel from performance of services under the contract upon material reason given in writing. On one occasion, CICA TEC provided Oxford with a surveillance tape that resulted in discipline of an encoder.

Moreover, the NMB's opinion in this case as to RLA jurisdiction over Worldwide's operations and employees at O'Hare is consistent with prior NMB determinations involving RLA jurisdiction over Worldwide's operations and employees at other locations.⁸

In sum, the record supports the NMB's finding that evidence bearing on three of the six traditional carrier control factors establishes that the Respondents are con-

trolled by the carriers, and this finding is consistent with prior NMB precedent. Therefore, we agree with the NMB's determination that the carriers exercise sufficient control over the Respondents' O'Hare operations to establish RLA jurisdiction. Accordingly, we find that Section 2(2) and (3) of the Act preclude us from exercising jurisdiction in this matter, and we shall dismiss the complaint.

ORDER

IT IS ORDERED that the consolidated complaint in Cases 13-CA-115933 and 13-CB-115935 is dismissed.

Dated, Washington, D.C. January 6, 2020

John F. Ring,	Chairman
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Marvin E. Kaplan,	Member
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William J. Emanuel	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

J. Edward Castillo, Esq., for the General Counsel.

Martin P. Barr, Esq. (Camell, Charone, Widmer, Moss & Barr, LTD), for Charging Party.

Roger H. Briton, Esq. (Jackson Lewis, LLP) and *Kathryn J. Barry, Esq. (Jackson Lewis, LLP)*, for the Respondents Oxford Electronics, Inc. and Worldwide Flight Services, Inc.

Michael Lied, Esq. (Howard & Howard PLLC) for Total Facility Maintenance, Inc. and Twin Staffing, Inc. Richard Boehm, International Representative for Respondent Transportation Workers Union of America—Local 504, AFL-CIO

DECISION AND RECOMMENDED ORDER

INTRODUCTION

KIMBERLY R. SORG-GRAVES, Administrative Law Judge. The primary issue in this case is whether the work performed by these joint employers at Terminal 5 of the O'Hare International Airport in Chicago, Illinois, falls within the jurisdiction of the National Labor Relations Act (NLRA) or the Railway Labor Act (RLA). The unit employees at issue, who operate and maintain the baggage conveyor and sorting system and maintain the jet way systems for Terminal 5, have been represented by the Charging Party under the NLRA. The Respondents contend that because Respondent Worldwide Flight Service, Inc. has a bargaining history with the Respondent Union pursuant to the RLA for its performance of similar work pursuant to other contracts at other airports, and because of the con-

⁷ The remaining factors—the degree of carrier supervision of the Respondents' employees, how those employees were held out to the public, and carrier control over employee training—do not support RLA jurisdiction. The NMB has previously asserted jurisdiction on the basis of the first three traditional factors where evidence was similarly lacking as to the last three. *Air Serv Corp.*, 33 NMB 276, 281, 283, 285–288 (2006).

⁸ See *Worldwide Flight Servs., Inc.*, 31 NMB 386 (2004); *Worldwide Flight Servs., Inc.*, 27 NMB 96 (1999); *Worldwide Flight Servs., Inc.*, 27 NMB 93 (1999).

trol that the contracting consortium of airlines in this case has over the Respondent Employers, the Respondent Union is the appropriate bargaining representative of the employees. As discussed below, I find that, contrary to the Respondent Employers' and the Respondent Union's assertions, the employment relationships at issue in the instant case are within the jurisdiction of the NLRA. Accordingly, as discussed more fully below, Respondent Employer's recognition of Respondent Union, and Respondent Union's acceptance of that recognition, and the unilateral changes that occurred as a result violate the NLRA.

STATEMENT OF THE CASE

On October 29, 2013, International Union of Operating Engineers Local 399, AFL-CIO (Charging Party or IUOE Local 399) filed an unfair labor practice charge, docketed by Region 13 of the National Labor Relations Board (NLRB) as Case 13-CA-115933.¹ The charge and its subsequent amendments filed on August 27, November 18, and December 17, 2015, allege that Oxford Electronics, Inc., d/b/a Oxford Airport Technical Services (Oxford) and Worldwide Flight Services, Inc. (Worldwide), Total Facility Maintenance, Inc. (Total), and Twin Staffing, Inc. (Twin), collectively referred to herein as Respondent Employers, as joint employers, violated the NLRA. On October 29, 2013, IUOE Local 399 also filed an unfair labor practice charge against Transportation Workers Union of America—Local 504, AFL-CIO (Respondent Union or TWU Local 504), docketed by Region 13 of the Board as Case 13-CB-115935, alleging violations of the NLRA, which was subsequently amended on March 18, 2016.² (GC Exh. 1(a)-1(l).)

On January 14, 2014, the NLRB referred Case 13-CA-115933 to the National Mediation Board (NMB) for an advisory opinion as to whether the employment relationship at issue falls within the jurisdiction of the RLA. (R. Exh. 2.) Prior to receiving an advisory opinion from the NMB, on May 28, 2015, the NLRB withdrew its request for an opinion and resumed processing the charges, and the subsequent amendments. (R. Exh. 3.)

Based on an investigation into these charges, on July 25, 2015, the Board's General Counsel, by the Regional Director for Region 13 of the Board, issued a consolidated complaint and notice of hearing, which was subsequently amended on December 28, 2016, alleging that Respondent Employers: interfered with, restrained and coerced employees exercise of the rights guaranteed in Section 7 of the NLRA; rendered unlawful assistance to TWU Local 504; discriminated in regard to hiring or tenure or terms or conditions of employment of its employees by encouraging membership in a labor organization; unlawfully unilaterally changed employees' terms and conditions of employment; and failed and refused to bargain with the exclusive-bargaining representative of their employees, in violation

of Section 8(a)(5), (3), (2) and (1) of the NLRA.³ The consolidated complaint, as amended, also alleges that TWU Local 504 restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the NLRA, and attempted to cause and caused an employer to discriminate against its employees in violation of Section 8(a)(3) of the NLRA, in violation of Section 8(b)(3) and (2) and 8(b)(1)(A) of the NLRA. (GC Exh. 1m and 1u.)

On April 12, 2016, Respondent Union filed an answer denying all alleged violations of the NLRA. (GC Exh. 1n.) Respondents Total and Twin filed an answer on April 14, 2016, and an amended answer on January 10, 2017, denying the NLRB has jurisdiction in this matter and denying all alleged violations of the NLRA. (GC Exh. 1p and 1w.) Respondents Oxford and Worldwide filed an answer on April 14, 2016, and an amended answer on January 17, 2017, denying the NLRB has jurisdiction in this matter and denying all alleged violations of the NLRA. (GC Exh. 1o and 1y.)

I heard this matter on January 17–19, 2017, in Chicago, Illinois, where I afforded all parties a full opportunity to appear, introduce evidence, examine and cross-examine witnesses, and argue orally on the record. General Counsel, IUOE Local 399, Respondents Oxford and Worldwide, and Respondents Total and Twin filed post-trial briefs on March 16, 2017, in support of their positions. Respondent IUOE Local 504 did not file a post-trial brief.

On the entire record, including my observations of the demeanor of the witnesses,⁴ and after considering arguments made at the trial and in posthearing briefs, I make the following findings, conclusions of law, and recommended remedy and order.

FINDINGS OF FACT

JURISDICTION AND LABOR ORGANIZATION STATUS

Oxford admitted, and I find, that at all material times Oxford, a Delaware corporation and a wholly owned subsidiary of Respondent Worldwide, with an office and place of business in Elmont, New York, has been engaged in the service and repair of ground support equipment and baggage systems at various locations including at Chicago O'Hare International Airport in Illinois. Oxford further admitted, and I find, that within a 12-month period, it has provided services valued in excess of \$50,000 to customers outside of the State of Illinois. (GC Exh. 1m.)

Worldwide admitted, and I find, that at all material times, it

¹ All dates are in 2013, unless otherwise indicated.

² On March 4, IUOE Local 399 had filed similar charges in Cases 13-CA-099518 and 13-CB-099519 that were subsequently dismissed by Region 13 as being untimely filed because Respondent Employers did not become the employers of the unit of employees at issue until July 1. (GC Exh. 5 and 6; R. Exhs. 7 and 8.)

³ I granted General Counsel's oral request during the hearing to amend par. 13 of the consolidated complaint to add a specific allegation that Twin and Total, by their supervisors or agents, "gave assistance and support to Respondent-Union by conditioning employment on employees' signing membership cards and dues check-off authorizations for Respondent-Union." (Tr. 367–368, 408–411.) This amendment was based upon employee testimony that supervisors or agents of Total and Twin told them that they must sign Local 504 membership cards and dues check-off authorizations as a condition of employment. (Tr. 216–219.) Total and Twin denied the allegation. (Tr. 411.)

⁴ I found all of the witnesses to be credible as there was little discrepancy amongst their testimony and nothing in their demeanor caused me to believe otherwise.

has been a Texas corporation with an office and place of business in Irving, Texas, engaged in the operation and maintenance of baggage handling systems at various locations including at Chicago O'Hare International Airport in Illinois. Worldwide further admitted, and I find, that in conducting these services, it has provided within a 12-month period, services valued in excess of \$50,000 in states outside of the State of Illinois. (GC Exh. 1m.)

Total admitted, and I find, that all material times, it has been an Illinois corporation with an office and place of business in Wood Dale, Illinois, engaged in the business of providing staffing services to various entities at various locations including at Chicago O'Hare International Airport in Illinois. Total further admitted, and I find, that in conducting these business operations it provided within a 12-month period, services valued in excess of \$50,000 for Oxford, an enterprise directly engaged in interstate commerce. (GC Exh. 1w.)

Twin admitted, and I find, that at all material times, it has been an Illinois corporation with an office and place of business in Westchester, Illinois, engaged in the business of providing staffing services to various entities at various locations including at Chicago O'Hare International Airport in Illinois. Twin, further admitted, and I find that in conducting these business operations it provided within a 12-month period, services valued in excess of \$50,000 for Oxford, an enterprise directly engaged in interstate commerce. (GC Exh. 1w.)

Respondent Employers contend that the work they perform at the Chicago O'Hare International Airport in Illinois is subject to the jurisdiction of the RLA, while General Counsel and Charging Party IOUE Local 399 contend the work is subject to the NLRA. The issue of whether Respondent Employers are subject to the jurisdiction of the NLRA is a preliminary question to consider and decide prior to a determination of whether Respondent Employers committed any of the unfair labor practices alleged in the complaint. Because many of the factual findings relevant to the jurisdictional issue are also relevant to other issues that arise in this case, and because I find that Respondent Employers are within the jurisdiction of the NLRA, I have set forth my factual findings below before discussing the preliminary question of jurisdiction. For the reasons discussed below, I find that Respondent Employers are engaged in commerce within the meaning of Section 2(2), (6), and (7) of the NLRA.

As I explain in more detail below, I find that Respondents Oxford and Worldwide jointly employ the dispatcher, mechanic, helper, and working foreman employees, that Respondents Oxford and Total jointly employ certain encoders and that Oxford and Twin jointly employ the other encoders. All of these employees are members of one appropriate bargaining unit described below.

Although Respondent Employers deny that IOUE Local 399 and TWU Local 504 are statutory labor organizations, the evidence of record clearly indicates that they are organizations that exist to deal with employers regarding employee wages, rates of pay, and conditions of work. (Tr. 37–38, 579–581; Jt. Exh. 1; GC Exh. 2.) Thus, I find that IOUE Local 399 and TWU Local 504 are labor organizations within the meaning of Section 2(5) of the NLRA.

FACTS

1. Background

In about 1993, the City of Chicago constructed Terminal 5 (T-5) to service the international flights to and from the O'Hare Airport. The City of Chicago required airlines seeking to operate out of T-5 to form a corporation to provide the necessary equipment and to operate various aspects of the terminal, including the work at issue in this matter. The consortium of airlines formed CICA Terminal Equipment Corporation (CICA TEC). (R. Exh. 28.) CICA TEC's board of directors is comprised of representatives from each of the airlines. Various positions for CICA TEC are elected from amongst the board members, including the management committee which appoints an executive director to carry out the oversight of CICA TEC's operations at T-5. (Tr. 513; R. Exh. 28, p. 45.) The City of Chicago enforces various requirements of CICA TEC, including requiring that certain percentages of the work be performed by unionized employees, a minority business enterprise (MBE) and, a woman business enterprise (WBE). (R. Exh. 28.)

Since 1993, CICA TEC has subcontracted to various employers the work performed by the unit of employees at issue. The unit employees operate, maintain, and repair T-5's baggage conveyor and sorting system, jet ways,⁵ and electrical, water and pre-conditioned air systems that are associated with each jet way. The unit consists of mechanics, helpers, encoders, and dispatchers.⁶ From 1993 until June 30, 2013, the unit employees were represented by IUOE Local 399 pursuant to the NLRA.⁷ (Tr. 39.)

From about 1996 until June 30, 2013, ABM Engineering Services, Inc., formerly known as Linc Facility Services and by other names, contracted with CICA TEC to perform this work, and employed the unit employees. ABM entered into successive collective-bargaining agreements with IUOE Local 399 covering the unit employees, the most recent of which was effective from October 1, 2011, through September 30, 2014

⁵ Jet ways are the ramp systems by which passengers traverse from the terminal to the planes.

⁶ ABM had employed a working foreman, but that position has not been filled since Respondent Employers took over on July 1.

⁷ The collective-bargaining agreement between ABM and IUOE Local 399 defined the unit as:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes.

The agreement further defines the covered employees as encoders, lead encoders, dispatchers, lead dispatchers, helpers, mechanics, senior mechanics, lead mechanics, and working foreman. (GC Exh. 2, Sec. 2 and 6.) Throughout this decision, I refer only to the categories of dispatchers, helpers, mechanics and encoder as inclusive of all the job positions. I have not addressed the working foreman position because it has not been filled by Respondent Employers.

(IUOE contract). (Tr. 39–41; GC Exh. 2.) The employees received the terms and conditions of this agreement until June 30, 2013. (Tr. 39.) In 2009, the City of Chicago required CICA TEC to contract with an MBE for a certain percentage of the T-5 workers. Therefore, ABM subcontracted the encoder work to Total, a MBE. (Tr. 81–82, 191, 324.) Total recognized IUOE Local 399 as the bargaining representative of the employees and applied the terms and conditions of the IUOE contract to the encoders working at T-5. (Tr. 180, 325.)

Many of the unit employees are long-term employees and the work they have performed has remained virtually unchanged, despite changes in their employers. The mechanics, who are assisted by helpers, perform preventative maintenance and repairs on the baggage conveyor and electronic sorting system, which processes between 4 and 5 million bags per year. (R. Exh. 9, p. 2.) The baggage conveyor system goes from the airline check-in counters, where airline employees place the baggage on the conveyor system, through the large bag room located below the terminal. The electronic sorting system directs the baggage down the proper conveyor line to arrive at the appropriate pier for airline personnel to retrieve and load the baggage on aircrafts. The system also processes luggage from incoming and connecting flights. Along with servicing the conveyor and sorting system, the mechanics clear baggage jams that occur in the system.

The mechanics also perform preventative maintenance and repairs on the jet ways including the hydraulic systems that allow the jet ways to be positioned and the electric supply and lighting within the jet ways. Attached to each jet way is an air-handling system and an electrical power system that are attached to aircraft while they are parked at the jet ways. Similarly, associated with each jet way is a “water cabinet” that provides fresh water to the aircraft through tubing attached to the aircraft while it is parked at the jet way. The mechanics perform maintenance and repair work on these systems when they are not attached to the aircraft.

The mechanics provide their own hand tools and use other tools, including power tools, which are provided by CICA TEC. The various employers have been required to provide a truck for the mechanics to use on the tarmac when servicing the jet ways. (Tr. 274, 284.)

The helper’s clear baggage jams and assist mechanics in performing their work described herein. (Tr. 511.)

The encoders type codes into the baggage sorting system to direct baggage through the conveyor system, if the automatic sorting system is not able to read the barcode tag that is placed on the luggage at check-in. Encoders may fix tags that come loose from bags and are also required to perform cleaning duties within the bag room and at the piers. (Tr. 185–189, 212, 314–315.) Mechanics, helpers, and dispatchers are assigned to perform encoder work when there is a high amount of baggage being processed. (Tr. 206.)

Dispatchers work in the control room which is a separate room within the bag room. Dispatchers monitor the electronic baggage sorting system through surveillance systems. If a jam or breakdown occurs in the conveyor/sorting system, the dispatcher dispatches a mechanic or helper to correct the situation. The dispatcher also takes calls from airlines reporting malfunc-

tions with the jet ways or their associated air, water, and electrical supply systems and dispatches a mechanic to address the issue. (Tr. 512.) Once a mechanic or helper addresses the issue, he or she reports back to the dispatcher who records the details of each dispatch. (Tr. 531, 535.) Airlines establish to which pier their luggage should be directed and enter this into the automatic sorting system. The dispatcher prepares a form showing the pier assignments for their supervisor, Oxford’s operations manager Robert Jensen to use. The dispatchers assist in preparing other reports required by the Maintenance Agreement. (Tr. 532–533.)

2. Oxford is Awarded the Contract by CICA TEC

In 2012, Oxford was awarded the contract by CICA TEC (Maintenance Agreement) to perform the unit work at T-5. (R. Exhs. 10, 11, 12, 13; GC Exh. 12.) The pertinent portions of the Maintenance Agreement between CICA TEC and Oxford, in which – Oxford is referred to as the Contractor, are as follows:

3.02 Role of the CICA TEC Executive Director

....The Executive Director will be CICA TEC’s representative during the performance of these Services and will have the authority to manage, monitor and coordinate the performance of Contractor.

Neither CICA TEC nor the Executive Director is a general contractor, and unless expressly provided for in this Agreement, does not have the obligations of a general contractor....

3.03 Standard of Performance

Contractor will perform... this Agreement with that degree of skill, care, and diligence normally exercised by contractors performing similar types of services in projects of a comparable scope and magnitude....

....Contractor will farther perform all Services according to those rules and regulations for services at the Airport, as applicable, and as promulgated by CICA TEC, its Executive Director, DOA, FAA, and any other interested Federal, State, or local governmental unit.

In the event the Contractor fails to comply with the above-referenced standards, the Contractor will perform again, or cause to be performed again, at its own expense, any and all Services which are required to be re-performed as a direct or indirect result of such failure.

Contractor will require its Subcontractors of any tier to perform all Services required of them in accordance with these standards....

3.04 Scope of Services

Contractor will perform, or cause to be performed, the Services identified in Exhibit A attached hereto.

Exhibit A

Scope of Services

The Contactor will be responsible for operating and maintaining the “CICA TEC

Equipment”, including, but not limited to, the following: inbound baggage systems, outbound baggage sortation system,

passenger loading bridges, aircraft ground power system (400Hz), potable water system, aircraft parking system, pre-conditioned air system and the triturator facility. In performing these services:

(Many of the provisions in this section list the work performed by the unit employees discussed above and have been omitted here.)

4. Contractor will perform daily inspections on all equipment...or at the direction of the Executive Director.

5. Contractor will perform its services on a 24 hours a day, 7 days a week schedule.

6. Contractor will, upon request of the Executive Director, provide staffing plans for the review and approval of the Executive Director.

8. Contractor will provide to the Executive Director monthly reports of services performed....

9. Contractor shall develop and implement a spare parts inventory control program....

10. Contractor shall develop and implement an operations a maintenance safety plan. This plan shall be subject to review and approval of the Executive Director.

14. Contractor will remove snow from inbound and outbound roadways leading to and from the T-5 bag room as required.

15. Contractor will perform other tasks as directed by the Executive Director, or designee, during scheduled work hours as long as these task do not interfere with scheduled services.

3.05 Key Personnel: Performance of Personnel

Contractor at all times will be an independent contractor with full and complete responsibility for all of its employees and representatives hereinafter collectively referred to the "Personnel". All such Personnel providing services to CICA TEC will at all times be employees of the Contractor and not of CICA TEC. CICA TEC reserves the right to direct the Executive Director to remove any personnel from the performance of Services from any position upon material reason therefore given in writing.

Contractor will . . . assign and maintained during the time of this Agreement an adequate staff of competent personnel who are fully equipped and qualified to perform the Services. . . . contractor will not replace "Key Personnel" as specified in Exhibit B without the prior written consent of CICA TEC, which consent will not be unreasonably withheld. (Note: Exhibit B does not refer to key personnel, but Exhibit D does list "Key Personnel" as Facility Manager, Assistant Facility Manager, and Supervisors.)

3.07 Salaries and Payment

Salaries of all employees of the Contractor performing Services will be paid unconditionally and not less often than once a month

3.08 Non-Discrimination

(The provisions in this section require the contractor, and any of its subcontractors and labor organizations that furnish labor to perform this contracted work, to comply with federal, state, and municipal anti-discrimination/human rights laws, regulations, and ordinances.)

3.09 Records, Audits and Confidentiality

All documents, data, studies and reports and instruments of service, prepared or used pursuant to this Agreement are the properties of CICA TEC....

5.01 Time of Commencement

....It is the sole responsibility of the Contractor to attend job meetings, keep itself aware of any revisions to flight schedules, and conform to any such revisions....

6.02 Payment Applications for Basic Services and Reimbursable Costs

(Contractor is required to submit payment requests listing work performed the prior month, but the Contractor is paid a monthly lump sum based upon the yearly contracted amount for the services regardless of the volume of work performed.)

8.03 Termination for Convenience

....CICA TEC may terminate this Agreement, or all or any portion of the Services to be performed, upon sixty (60) days prior notice....

(See, GC Exh. 12 for the full text of the Maintenance Agreement.)

To meet the contractual requirements for a unionized work force, Oxford informed CICA TEC that it planned to subcontract the dispatcher and mechanic work to its parent company Worldwide. (Tr. 291–292; RO Exh. 10; GC Exh. 12, Sec. 3.08(E), p. 9.) Worldwide maintains a collective-bargaining agreement with TWU Local 504 (TWU contract) under the RLA and has a history of performing work at other airports with employees represented under the TWU contract.⁸ (Tr. 414–415; Jt. Exh. 1; R. Exh. 12, p. 11, 17.) Oxford/Worldwide⁹ arranged with Total to continue employing a portion of the encoder workers as a MBE and arranged with Twin, a WBE, to employ the remainder of the encoders. (Tr. 328, 333, 349; R. Exh. 12.) It is undisputed that Respondent Oxford required Respondents Total and Twin to apply the TWU contract terms to the encoders they employed and that they complied with this requirement. (Tr. 330–333, 357–358.)

Through the bidding process, CICA TEC representatives encouraged but did not require Oxford/Worldwide to retain ABM's employees as presumably they were considered to be an experienced and dependable work force. (Tr. 460.) CICA TEC's executive manager Jack Ranttila (Ranttila) also highly recommended but did not require Oxford/Worldwide to hire

⁸ Respondent Oxford/Worldwide submitted evidence that it performs work at numerous airports throughout the United States subject to the RLA. As discussed more fully below, the NLRB's standard for determining if the RLA has jurisdiction over a disputed unit of employees, which the NLRB has adopted, does not take into consideration the control exercised by carriers at other facilities pursuant to different contract provisions. Thus, Oxford/Worldwide's history of work at other airports, although considered, is not relevant to the determination of whether RLA jurisdiction is appropriate in this case.

⁹ Oxford and Worldwide stipulated that they are joint employers of the unit employees, and are referred to herein as Oxford/Worldwide in their joint employer status. (Jt. Exh. 4.)

ABM's working foreman George Farmer, (Farmer). (Tr. 460.) Farmer was hired by Oxford as a supervisor over the work at T-5. (Jt. Exh 4.) CICA TEC also required Oxford/Worldwide to submit the resume of Robert Jensen (Jensen), Oxford's selection for the operations/facility manager position. Oxford/Worldwide complied with this request and CICA TEC raised no objection to Jensen assuming that position. (Tr. 458–460; R. Exh. 14; GC Exh. 12, Sec. 3.05.)

In October 2010, Oxford's vice president Jay Rossi (Rossi), Worldwide's vice president of labor relations Dave Cunningham (Cunningham), and Jensen held a meeting with the mechanic employees. (Tr. 56, 122, 502–503.) The mechanics were given prior notice of the meeting and informed IUOE Local 399 Business Representative McGinty, who did not receive any notice from Oxford/Worldwide, of the meeting. (Tr. 83–84.) At the meeting, Rossi and Cunningham informed the employees that Oxford had won the bid and had subcontracted the work to Worldwide, and it expressed their interest in hiring the mechanics. They also told them that Worldwide's employees are represented by TWU Local 399. They explained that to be hired, the employees were required to complete employment applications, pass physicals and drug screenings, and complete TWU Local 504's membership and dues deduction authorization form. (Tr. 502.) Oxford/Worldwide had available copies of the TWU contract, an Assignment and Authorization for Checkoff and Union Dues form for TWU Local 504, health benefit premium information, and Worldwide applications. (Tr. 503–504.)

On October 15, 2012, McGinty called Cunningham and requested to bargain with Oxford/Worldwide as the employees' bargaining representative. Cunningham responded that Oxford/Worldwide had a nationwide contract with TWU Local 504, and that they fell under the jurisdiction of the RLA. (Tr. 56–58.) Later that same day, Cunningham confirmed this position in an email to McGinty. (GC Exh. 4.) McGinty did not respond to this email but subsequently filed charges in this case.

Initially, Oxford/Worldwide was scheduled to take over the work on January 1, but due to influence of the City of Chicago over the concerns that the employees were losing IUOE Local 399 as their bargaining representative, the takeover was delayed until July 1. (Tr. 454.) Between October 2012, and the takeover in July, Oxford/Worldwide representatives met with the unit employees to encourage the dispatchers, mechanics, and helpers to apply for positions with Oxford/Worldwide. It is undisputed that during these meetings, Oxford/Worldwide representatives told the employees that their terms and conditions of employment would be subject to the terms of the TWU contract after the takeover. (Tr. 127–129; Jt. Exh. 4.)

Ultimately, of the former ABM employees, 5 dispatchers, 3 helpers, and 5 mechanics completed the application process. All 13 of them were hired. (Jt. Exh. 2.) Of the former ABM employees, 6 employees did not apply or withdrew from the application process. (Jt. Exh. 3.) Oxford/Worldwide hired 1 additional dispatcher and 7 new mechanics. Based upon job positions covered under the TWU contract, Oxford/Worldwide referred to these job positions as baggage system operators, field services technicians, and technical specialists. (Jt. Exh. 2.)

Oxford/Worldwide stipulated and the evidence reflects that Oxford/Worldwide applied the terms of the TWU contract to these employees, required the employees to sign TWU Local 504's Assignment and Authorization for Checkoff of Union Dues as a condition of employment, and deducted and remitted dues from their paychecks to TWU Local 504. (Tr. 127–128, 269–270; Jt. Exhs. 1 and 4; RO Exh. 6; GC Exhs. 7 and 10.)

The encoders learned of the change from ABM to Oxford by a notice posted in the control room. (Tr. 195.) Immediately after Oxford/Worldwide took over, all 14 of the encoder's remained employed by Total, pursuant to its contract with Oxford, without being subject to an application process. (Tr. 196.) In about early August, Twin's president Taunesha Carpenter (Carpenter) and Total's supervisor Ms. Coakley¹⁰ spoke to lead encoder Dessie Martin at her workstation. (Tr. 196–197.) Carpenter and Coakley explained that because the Maintenance Agreement required that a certain percentage of the encoders be employed by a WBE, half of the encoders needed to switch their employment from Total to Twin. Martin suggested that they divide the employees by which lead encoder they were assigned. Martin was the lead for the eight encoders that worked the first and second shifts and employee Christine Sobies was the lead for the six encoders that worked the third and fourth shifts. (Tr. 197–198.) Shortly thereafter, Rossi called Carpenter and assigned the six encoders working the third and fourth shifts to Twin. (Tr. 360.)

Rossi informed Total's president Daniels and Twin's president Carpenter that they must apply the TWU contract to the encoder employees, and Total and Twin entered into agreements binding themselves to the terms of the TWU contract without negotiating with TWU Local 504. (Tr. 329, 355; GC Exhs. 15 and 16.) Total and Twin applied the terms of the TWU contract to the encoders, required the encoders to sign TWU Local 504's Assignment and Authorization for Checkoff of Union Dues form as a condition of employment, and deducted and remitted dues from their paychecks to TWU Local 504 from January 1, 2014, through November 15, 2015, when TWU withdrew its recognition of the encoders without stating a reason for the withdrawal. (Tr. 216–218, 331–333, 357–358; Jt. Exh. 4.) Despite TWU withdrawing recognition of the encoders, Total and Twin continued to apply the wages, benefits, and other terms and conditions of the TWU contract to the encoders. (Tr. 335, 358.)

3. Changes in the unit employees terms and conditions of work after July 1

The parties stipulated, and I find, that prior to July 1, ABM and its subcontractor Total had applied the terms and conditions of employment in the IOUE contract to the unit employees. (Tr. 41–43; 180–181.) The parties also stipulated, and I find, that since July 1, Respondent Employers have applied the terms and conditions of employment in the TWU contract to the unit employees. (Tr. 180–181; Jt. Exh. 4.) These stipulations are repeatedly supported by testimony of the employees and Re-

¹⁰ The record refers to a Tracy Ann Coakley, a Faye Ann Coakley, and a Charlene Coakley. Although the record is unclear as to whether these references are to more than one person, each reference refers to a Ms. Coakley who has supervisory authority for Total. (Tr. 298.)

spondent Employers' representatives. Based on the terms of the IUOE contract and the TWU contract, I find that there were changes to the unit employees' wages, overtime wages, mechanics' job classifications, seniority, 401(k) benefits, health insurance benefits, pension benefits, vacation and sick leave, holidays and personal days, payments to IUOE Local 399 employee training fund, and the weekly pay schedule. (GC Exh. 2; Jt. Exh. 1.)

Employees also testified that Respondent Employers changed the shift structures. (Tr. 133–134, 192–193.) Although the shift schedule implemented by Respondent Employers was different than many of the employees enjoyed prior to July 1, the new shift schedule complies with Section 8 of the IUOE contract that addresses shift schedules. (GC Exh. 2.) Therefore, I find insufficient evidence of a change in the employees' terms and conditions of work with regards to the shift times that they were scheduled to work.

General Counsel also asserts that Respondent Employers implemented a policy of patching and not replacing worn or torn uniforms. Employee Pernell Miller testified that ABM's policy had been to replace worn or torn uniforms, but Respondent Employers' policy is to patch and not replace the uniforms. (Tr. 148.) Employee Sheraney Ford testified that in her experience it has always been the policy to repair uniforms if possible and replace if necessary. (Tr. 277–278.) Their testimony on this issue was very brief and neither of them testified that any management official made a statement or issued a notice about the policy. I have no reason to doubt their credibility as to what has occurred when they separately raised uniform repair concerns. Based upon these different experiences, I am unable to definitively discern what the policy has been before or after the takeover. Therefore, I do not find sufficient evidence of a change in the policy concerning patching or replacing uniforms after Respondent Employers took over.

4. Control Over the Unit Employees' Terms and Conditions of Employment

After Oxford/Worldwide implemented the Maintenance Agreement on July 1, the unit employees' day-to-day work duties discussed above did not change in any significant way. They continued to perform the same work in the same location with the same equipment which is provided by CICA TEC, with the exception of the employees' personal tools and the work truck provided by Oxford. (Tr. 133, 547.)

The Maintenance Agreement does not provide for direct supervision of the unit employees but requires all employees to comply with the T-5 rules and allows CICA TEC to remove an employee from the performance of the work covered by the contract. (GC Exh. 12.) The T-5 rules derive from the safety and other legal concerns raised by operating an international airport terminal much of which does not apply to the duties of the unit employees. (R. Exh. 15.) Ranttila was CICA TEC's executive director until January 2016 and was charged with overseeing the various other functions necessary to operate T-5 in addition to the work performed by Respondent Employers. (Tr. 513.) Since January 2016, CICA TEC has contracted with a group called AvirPro to perform the executive director's duties, including Director Chris DiFario, Operations Manager Joe

Shirley (Shirley), a finance manager and two duty managers. (Tr. 523–515.) Shirley has taken over Ranttila's functions with regard to overseeing the work performed by Respondent Employers. (Tr. 168–169; 517.) Ranttila and now Shirley have frequented the bag room and have raised maintenance or other issues that they have notice with Jensen as frequently as every 2–3 days. (Tr. 168–169.) Jensen investigates the situation and decides if, how, and when to address the issue. Then Jensen assigns the work and oversees its performance. (Tr. 554–555.)

Employee Pernell Miller testified that Ranttila raised maintenance issues directly to him about once per month. Miller's practice was to seek direction from Farmer or Jensen when this occurred which is consistent with Jensen's testimony that he investigates complaints and determines how to handle them. (Tr. 168, 554–555.) Employee Dessie Martin testified that Ranttila spoke to her directly about baggage pile-ups a couple of times in the 20 years she worked there. When this occurred she tried to correct the issue without seeking direction from her supervisor. (Tr. 71.) Shirley seldom speaks directly to the unit employees but does raise issues about Respondent Employers' performance with Jensen. (Tr. 517.) Shirley raised the issue of Respondent Employers' lack of supervisor presence on the weekend causing Jensen to adjust the employees' schedules to have a lead employee present on the weekends. Shirley also requested that Jensen schedule the mechanics to work on the new jet way system that was installed so they can become more familiar with it. (Tr. 517–518.) From the change in tone of Jensen's voice when he testified about these two requests from Shirley, it was clear that Jensen was not used to such interference with his autonomy but had complied to please his customer. *Id.*

The Maintenance Agreement allows Ranttila or Shirley to request that Respondent Employers do additional tasks when time allows. Jensen testified that he would determine when those tasks could be performed. Occasionally that did not occur until weeks later. (Tr. 557–558.) The AvirPro's two duty managers apparently monitor the flow of luggage through the bag room and report to the carriers any concerns, but have little or no direct communication with Respondent Employers' employees. (Tr. 515–516.)

Respondent Employers have discharged only one employee. The employee lost badge privileges at the terminal due to entering a restricted area for which he did not have access privileges, and therefore, was no longer eligible to work at the airport. (Tr. 303.) Twin hired the replacement encoder and referred the individual to T-5 to work without input from the other Respondent Employers or CICA TEC. (Tr. 363.)

On one occasion, Ranttila brought to Jensen's attention a surveillance tape showing an encoder that appeared to be failing to adequately perform her job. (Tr. 296.) The record does not reflect that Ranttila required that the encoder be disciplined or recommended any particular discipline. Jensen independently reviewed the tape and then reviewed the tape with Total and Twin management officials before making his recommendation as to the appropriate discipline, to which Total and Twin agreed. (Tr. 295–298.) Although very little discipline has been issued since July 1, Jensen has the authority to give encoders verbal warnings and to effectively recommend discipline for

encoders. (Tr. 299–301.) I find no evidence that any CICA TEC representative has ever hired, fired, disciplined, recommended discipline, evaluated or promoted of any employee of Respondent Employers.

Worldwide, Total, and Twin do not have onsite supervisors; therefore, Jensen and Farmer provide supervision for all of the unit employees. At most, Total and Twin supervisors may speak to the encoders who are working when they deliver their paychecks biweekly, but they often drop off the paychecks without interacting with the encoders. (Tr. 214.) Farmer schedules the employees including the encoders. The lead encoders make out daily work station assignments and break schedules. If an encoder is absent for all or a portion of a shift, the absence is reported to Jensen and/or Farmer. The lead encoder attempts to get another employee to cover the shift. If no one volunteers, Jensen has the authority to assign an employee to cover the shift and authorize overtime if necessary. (Tr. 147.) Encoders who are employed by Total cover shifts for encoders employed by Twin, and vice versa. (Tr. 202.) During peak operation periods, Jensen regularly assigns helpers, mechanics, and/or dispatchers to assist in performing the encoder work. (Tr. 294.)

The record contains no evidence that CICA TEC plays any role in establishing work shifts for unit employees other than the Maintenance Agreement requires Oxford to provide services 24 hours per day, 7 days per week. Oxford established for all the unit employees four staggered shifts to provide 24-hour coverage. (Tr. 126, 134–135, 136.)

As discussed above, Respondent Employers set the pay rates for the unit employees based upon the pay scales set forth in the TWU contract.¹¹ The employees are paid biweekly. (Tr. 143.) Although the TWU contract information was provided to CICA TEC during the bidding process and was the basis for Oxford's labor cost calculations, the Maintenance Agreement does not set employee wages and does not give any direction as to how Oxford is to allocate the awarded lump sum contract amount. (GC Exh. 12, Sec. 3.07.) The Maintenance Agreement only requires Oxford pay the employees at least monthly and in compliance with laws regulating employee payroll. (GC Exh. 12, Sec. 3.07.)

The other terms and conditions of employment, such as vacation pay, holidays, sick leave, military leave, overtime, meal periods, seniority, life insurance, medical and dental insurance etc., are established by Respondent Employers' application of the TWU contract to the unit employees. (Jt. Exh. 1.) The Maintenance Agreement is silent as to any of these terms and conditions of employment. Total and Twin provided the encoders employee handbooks that addressed many of these terms and conditions of work. (GC Exhs. 8 and 9.) As discussed above, the TWU contract provisions were applied to the encoders regardless of any conflict with the employee handbooks'

¹¹ The record reflects that the mechanics were initially told their starting rate would be \$21 per hour and that was later increased to \$23 per hour. The record is unclear about how this was accomplished based upon the rates listed in the TWU contract, but it was possibly accomplished by categorizing them as field service technicians instead of technical specialist like the new hire mechanics were classified. (Tr. 140–141; Jt. Exh. 2.)

provisions.

Oxford's safety trainer provides yearly safety training for all the unit employees in the control room's conference room. (Tr. 212–213, 308.) The Maintenance Agreement requires Respondent Employers to provide safety training that is subject to CICA TEC review and approval. (GC Exh. 12, Sec. 3.02, Exhibit A (10).) The record is silent as to whether the safety training provided by Oxford was approved by CICA TEC. The training of new encoders is provided by lead encoder Dessie Martin with no input by CICA TEC. (Tr. 212.) Similarly, new mechanics are trained by lead mechanics with no input by CICA TEC. (Tr. 138.) The record is silent as to how new dispatchers and helpers are trained.

ANALYSIS

1. Respondent Employers' Operations at T-5 Falls Within the Jurisdiction of the NLRB

I find it is appropriate for the NLRB to decide the jurisdiction dispute in this case without an opinion from the NMB. I further find that the record does not support Respondent Employers' contention that its employment relationship with the unit employees is indirectly controlled or under the common control of a carrier or carriers to an extent that it is within the jurisdiction of the RLA.

A. Applicable Law

The NLRA protects the rights of employees to organize and bargain collectively, but expressly exempts employers "subject to the Railway Labor Act" and "any individual employed by an employer subject to the Railway Labor Act" from its reach, see 29 U.S.C. §§ 151, 152(2)-(3), 157. The RLA covers employers who are rail carriers, common air carriers, and "any company which is directly or indirectly owned or controlled by or under common control with any carrier." 45 U.S.C. § 151 First, 181.

The NLRB has a long-term general policy of referring questions concerning RLA jurisdiction to the NMB to get the benefit of the NMB's expertise on these matters and to avoid conflicting agency determinations. The NLRB's stated practice is to refer the parties to the NMB and dismiss the charge or petition in cases in which RLA jurisdiction is clear; to retain cases in which RLA jurisdiction is clearly lacking; and to refer close cases of arguable RLA jurisdiction to the NMB for its advisory opinion before the NLRB decides the issue. *Federal Express Corp.*, 317 NLRB 1155, 1156 & fn. 6 (1995). Despite this general policy, the NLRB recognizes that "there is no statutory requirement that this question of jurisdiction be submitted for answer first to the NMB." *Spartan Aviation Indus., Inc.*, 337 NLRB 708, 708 (2002); See also *United Parcel Service, Inc.*, 318 NLRB 778, 780 (1995), *enfd. by United Parcel Serv., Inc. v. NLRB*, 92 F.3d 1221, 1224–1226 (D.C. Cir. 1996); *Dobbs Houses, Inc. v. NLRB*, 443 F.2d 1066, 1072 (6th Cir. 1971).

In practice, the NLRB has not referred to the NMB cases presenting jurisdictional claims in factual situations similar to those where the NMB has previously declined jurisdiction. *E. W. Wiggins Airways*, 210 NLRB 996 (1974); *Air California*, 170 NLRB 18 (1968). The NLRB has also declined to refer RLA claims to the NMB for an initial opinion in cases where the NLRB has previously exercised uncontested jurisdiction

over the employer. *Hot Shoppes, Inc.*, 143 NLRB 578 (1963) (NLRB rejected employer's claim that its employees were subject to the jurisdiction of the RLA when the employer had a long history of recognizing the NLRB's jurisdiction with regard to those employees without objection). See *United Parcel Service, Inc.*, 318 NLRB at 780.

In cases where the NLRB declines to refer an RLA jurisdictional issue to the NMB, the NLRB follows NMB precedent in deciding the jurisdictional issue. *Id.* at 779. The NMB employs a two-part test to determine whether an employer that is not itself a carrier is sufficiently controlled by a carrier to be subject to RLA jurisdiction. See *Signature Flight Support of Nevada*, 30 NMB 392, 399 (2003). The two-part test requires an affirmative finding that (1) "the nature of the work is that traditionally performed by employees of rail or air carriers," and (2) "the employer is directly or indirectly owned or controlled by, or under common control with a carrier or carriers." *Id.* To determine whether an employer is under the control of a rail or air carrier, the NMB traditionally considers the following six factors:

- (1) the extent of the carrier's control over the manner in which the company conducts its business; (2) the carrier's access to the company's operations and records; (3) the carrier's role in the company's personnel decisions; (4) the degree of carrier supervision of the company's employees; (5) whether company employees are held out to the public as carrier employees; and (6) the extent of the carrier's control over employee training.

Air Serv Corp., 33 NMB 272, 285 (2006).

In *Swissport USA, Inc.*, 35 NMB 190 (2008), NMB found that the facts it considered in that case to determine if the carriers exerted substantial control over Swissport, to be similar to those it found in *Air Serv Corp.*:

The service agreements between Swissport and the Carriers dictate nearly all aspects of Swissport's operations. The Carriers specify the services provided, the penalties for improper service, staffing and supervisory levels required to provide the specified services, timelines for providing the specific services, manuals and standards that Swissport's employees must meet, and required training for Swissport's employees. Most of the agreements provide that the Carrier provides initial training to Swissport employees. Under its contract with one of the Carriers, Asiana Airlines, Swissport employees wear Asiana uniforms and hold themselves out to the public as Asiana employees. The Carriers have the right to audit, inspect, or observe Swissport's operations in carrying out the services specified in the agreements. Each Carrier requires a daily briefing from Swissport on the day's activities. This case is also similar to *International Total Servs.*, 26 NMB 72 (1998). In that case, as here, the carriers did not control hiring or firing employees. Nevertheless, the [NMB] found the company subject to RLA jurisdiction based, in part, on the fact that carriers could request employee re-assignment and played a significant role in staffing and other working conditions.

Swissport USA, Inc., 35 NMB 190, 195–196 (July 2, 2008).

The NMB utilizes the two-part test and considers the six factors for each employment situation. Thus, a contractor who

performs work for a common carrier at one location that has been determined to be within the jurisdiction of the RLA is not automatically covered by the RLA in its performance of another contract at another location. See *Menzies Aviation, Inc.*, 42 NMB 1, 6 (2014) (where NMB declined to find RLA jurisdiction due to lack of carrier control over the employer despite its earlier ruling in *John Menzies*, 30 NMB 463, 469 (2003) finding RLA jurisdiction involving a different contract where the carrier exerted more control over the employer). The NMB specifically found that its prior determinations in *Air Serv Corp.*, 33 NMB 272 (2006), and *Air Serv Corp.*, 38 NMB 113 (2011) did not control the jurisdictional issue in *Air Serv Corp.*, 39 NMB 450, 455 (2012). "Because contracts and local practices might vary in a determinative manner for different employee groups, different operations, and in different locations, the NMB's opinion is based on the record before it in each case." *Air Serv Corp.*, 39 NMB 450, 455–456 (2012).

The NLRB has noted that in more recent decisions the NMB has continued to consider the six factors set forth in *Air Serv Corp.*

but has placed more emphasis on [the third factor of] whether the carrier or carriers exercise "meaningful control over personnel decisions." See, e.g., *Airway Cleaners, LLC*, 41 NMB 262, 268 (2014) (control exercised is "not the meaningful control over personnel decision[s] required to establish RLA jurisdiction"); see also *Menzies Aviation, Inc.*, 42 NMB 1, 7 (2014) (no jurisdiction where carrier "does not exercise 'meaningful control over personnel decisions'" (quoting *Airway Cleaners*)); *Bags, Inc.*, 40 NMB 165, 170 (2013) (carrier control "is not the type of meaningful control over personnel decisions [sufficient] to warrant RLA jurisdiction"). Where it has not found such "meaningful control," the NMB has emphasized in particular the absence of control over hiring, firing, and/or discipline. See *Menzies Aviation*, 42 NMB at 7 (noting, in finding that airline does not exercise meaningful control over personnel decisions, that it "does not hire, fire, or routinely discipline" service provider's employees); *Airway Cleaners*, 41 NMB at 269 (airline "does not have sufficient control over the hiring, firing and discipline of [service provider's] employees to establish RLA jurisdiction"); *Bags, Inc.*, 40 NMB at 170 (service provider not subject to RLA where airlines "do not have significant control over the hiring, firing and discipline of [provider's] employees").

Allied Aviation Serv. Co. of New Jersey, 362 NLRB No. 173 (2015), *enfd.* by *Allied Aviation Serv. Co. of New Jersey v. Nat'l Labor Relations Bd.*, No. 15-1321, 2017 WL 1379517, at *4 (D.C. Cir. Apr. 18, 2017). The NLRB went on to note that the NMB clarified in *Menzies Aviation* and *Airway Cleaners* that RLA jurisdiction will not be found when the elements of control are "no greater than that found in a typical subcontractor relationship." *Id.*

As a consequence to the shift in NMB precedent, the NLRB has asserted jurisdiction and rejected claims of RLA jurisdiction in cases that are factually similar to *Menzies Aviation*, *Airway Cleaners*, and *Bags, Inc.* where a review of the six factors, with an emphasis on the carriers' exercise of meaningful control over personnel decisions, evidences a lack of carrier control that is no greater than that found in a typical subcontractor rela-

tionship. *Allied Aviation Service Co. of New Jersey*, 362 NLRB 1392, 1392. Failure of the NLRB to continue to follow its precedent of finding jurisdiction where the NMB's precedent is clear that it would decline to assert jurisdiction under the RLA would leave employees and parties in a "no-man's land" without a forum to address labor disputes.

B. Contentions of the Parties

Respondent Employers contend the NLRB should not decide the jurisdictional issue in this matter without an advisory opinion from the NMB. Neither General Counsel nor Charging Party directly addressed this issue at hearing or in their briefs. I am not persuaded by Respondent Employers' argument that it is inappropriate for the NLRB to assert jurisdiction in this matter without first receiving an advisory opinion from the NMB for three reasons.

First, Respondent Employers¹² contend that because the NMB certified the TWU as the bargaining representative of Worldwide's employees in crafts covering the work of the unit employees, and that only the NMB can alter that certification, it is inappropriate for the NLRB to decide the jurisdictional dispute in this matter. (R. Exhs. 25 and 26.) To support this argument, Respondent Employers cite cases holding that the NMB has the exclusive authority to grant, withhold, or revoke the certification of a representative under the RLA. See *Virginian Ry. v. System Federation No. 40*, 300 U.S. 515, 548 (1937); *United Airlines/ Continental Airlines*, 41 NMB 251, 261 (2014); *Russell v. National Mediation Board*, 714 F.2d 1332 (5th Cir. 1983), cert. denied, 467 U.S. 1204 (1984); *Missouri Pacific Railroad (Union Pacific)*, 15 NMB 95 (1988); *Trans World Airlines/Ozark Airlines*, 14 NMB 218 (1987); *Switchmen's Union of North America v. National Mediation Board*, 320 U.S. 297, 304 (1943); *Delta Air Lines, Inc./Northwest Airlines, Inc.*, 36 NMB 36, 50 (2009). I agree that these cases hold that the certification of a representative covers all of the employer's employees in that craft who are within the jurisdiction of the RLA, but I do not find the cases stand for the proposition that such certifications extend to employment situations outside the jurisdiction of the RLA. As discussed above, a finding of RLA jurisdiction with regard to an employer's performance of one contract does not automatically extend RLA jurisdiction to the performance of similar work under another contract at another facility. *Menzies Aviation* supra at 6; *Air Serv Corp.*, 39 NMB at 455–456. Thus, I find Worldwide's bargaining obligation under the RLA in other employment relationships covering similar work is not determinative of the jurisdictional issue in this matter.

Second, Respondent Employers contend that the NLRB is defying its precedent by retracting its request for an NMB opinion on the jurisdictional question and asserting jurisdiction. Respondent Employers cite the DC Circuit's holding in *ABM Onsite Service-West, Inc. v. NLRB*, 849 F.3d 1137, 1139 (D.C. Cir. 2017) and incorrectly assert that the circuit court found the NLRB's decision to assert jurisdiction in that case without re-

fering it for an NMB opinion was arbitrary and capricious. What the court in *ABM Onsite* found to be arbitrary and capricious was the NLRB's application of the more recent NMB precedent requiring a carrier to have more "meaningful control over personnel decisions" in order for RLA jurisdiction to be established without either the NLRB or the NMB having expressed a reason for their departure from prior precedent of applying the six factor test without this emphasis. The court held that the NLRB needed to explain the departure from the six-factor test or alternatively defer the matter to NMB for an explanation of its departure from its precedent. Respondent Employers' interpretation of the holding in *ABM Onsite* is directly contradicted by the DC Circuit's subsequent holding in *Allied Aviation Service Co. of New Jersey v. NLRB*, 854 F.3d 55 (D.C. Cir. 2017), that the NLRB's assertion of jurisdiction in that matter was appropriate without review by the NMB in light of the application of the six factors set forth by the NMB in *Air Service Corp.* to the facts of that case. Thus, I find no merit in Respondent Employers' assertion that the holding in *ABM Onsite* requires the NLRB to defer a case to the NMB for an opinion before asserting jurisdiction.

To the contrary, the NLRB's underlying decisions in *ABM Onsite* and *Allied Aviation* underscore that the NLRB finds exceptions to its general policy of deferring certain RLA jurisdictional issues to the NMB. See *Allied Aviation Serv. Co. of New Jersey & Local 553, Int'l Board. of Teamsters, AFL-CIO*, 362 NLRB No. 173 (2015); *ABM Onsite Services—W., Inc. & Int'l Assn. of Machinist & Aerospace Workers, Dist. Lodge W24, Local Lodge 1005*, 362 NLRB No. 179 (2015) (not reported in Board volume). The Board has declined to defer cases presenting jurisdictional claims in factual situations similar to those where the NMB has previously declined jurisdiction. *Id.*

Third, Respondent Employers contends that it is similarly situated, although in the inverse, to the employer in *United Parcel Service*, (UPS) which had a long history of operating under the jurisdiction of the NLRB, because Respondent Worldwide has a long history of operating under the jurisdiction of the RLA. Citing, *United Parcel Service, Inc.*, 318 NLRB 778, 780 (1995). In *United Parcel Service*, the NLRB held that absent substantial changes to the employer's operations it would not defer the jurisdictional question to the NMB. The NLRB found that retaining and resolving the jurisdictional dispute in that case was the most effective way to promote labor stability. *Id.*

In the instant case, Worldwide has a long history of bargaining with TWU Local 504 under the jurisdiction of the RLA as the representative of its employees who perform work under various contracts for carriers and consortiums of carriers at other airports. Respondent Employers contend the NLRB should recognize that history and apply its rationale in *United Parcel Service*, in reverse, and defer the jurisdictional dispute in this case to the NMB in order to promote labor stability. Respondent Employers fail to recognize that the unit employees in the instant case had a 20-year collective-bargaining history with IUOE Local 399 as their representative under the NLRA while performing the same work, in the same location, in the same manner, pursuant to a series of contracts between CICA

¹² As discussed more fully below, I find that Oxford, Worldwide, Total and Twin are joint employers; and therefore, any argument made by one is attributed to the others. Additionally, Total and Twin incorporated Oxford/Worldwide's brief by reference.

TEC and predecessor contractors. In considering all the factors in this case, the stronger argument for promoting labor stability supports the NLRB declining to refer this jurisdictional dispute to the NMB for an opinion. This approach will not invite labor unrest in other locations where Respondent Worldwide already performs work governed by the RLA as Respondent Employers contend. If there is an established bargaining history at those locations under the RLA, the NLRB is likely, pursuant to its reasoning in *United Parcel Service*, to defer to the NMB to promote labor stability. To the extent that the two-part test, with or without the emphasis on control over personnel matters, invites uncertainty in new contractual situations, that uncertainty exists regardless of whether the NMB or the NLRB decides the jurisdictional issue. Accordingly, I reject Respondent Employer's contention and find that the NLRB's holding in *United Parcel Service* supports the NLRB deciding the jurisdictional dispute in this matter without first acquiring an NMB opinion. Furthermore, I find, as is discussed below, that this case is factually similar to other cases where the NMB has declined to assert jurisdiction under the RLA and is appropriate for the NLRB to make the jurisdictional determination.

C. Application of the Two-Part Test with Emphasis on Control over Personnel

I find and the parties do not dispute that work performed by the unit employees is work traditionally performed by airline employees and meets the first prong of the *Air Serv* test. See *Global Aviation Services, LLC*, 35 NMB 2, 2008. The parties do not dispute, and I find, that Respondent Employers perform this work pursuant to a contract with CICA TEC, a consortium of carriers. For the reasons discussed below, I do not find that Respondent Employers' operations at T-5 are indirectly controlled or under common control with a carrier or carriers to an extent sufficient to meet the second prong of the *Air Serv* two-part test to invoke the jurisdiction of the NMB under the Railway Labor Act.

Respondent Employers contend that they are under control of CICA TEC, a consortium of carriers, based upon the six factors considered in examining the second part of the two-part test. Respondent Employers note that absent minor exceptions all of the equipment that the employees operate and maintain and most of the tools they use to perform their work are owned by CICA TEC. Respondent Employers also point to contractual provisions that give CICA TEC the right to: set standards for the performance of the contract and penalties for failure to perform; access to Respondent Employers operations and records; review and reject Respondent Employers managers and supervisors; remove any employee from working under the contract; and require Respondent Employers to comply with anti-discrimination laws. Respondent Employers also rely upon other provisions of the Maintenance Agreement that require Respondent Employers to provide services 24 hours per day, 7 days per week, pay employees at least monthly, require Respondent Employers to correct substandard service at their own expense, and give CICA TEC the unilateral right to withdraw from the contract on short notice.

General Counsel and Charging Party IOUE Local 399 contend that Respondent Employers are not under the common

control of CICA TEC based upon an evaluation of the six factors with an emphasis on control of personnel matters. General Counsel and Charging Party point to provisions of the Maintenance Agreement that clarify CICA TEC is not the employer of the unit employees and limit CICA TEC's role in personnel decisions and supervision of the unit employees. CICA TEC does not set their hours of work, wages, or direct their work, nor is CICA TEC involved in their hiring, discipline, or discharge. General Counsel and Charging Party also note that the employees are not trained by CICA TEC and are not held out to the public as carrier employees.

I find that a review of the six factors with an emphasis on meaningful control over personnel decisions does not warrant a finding that Respondent Employers operations in this case are within the jurisdiction of the RLA.¹³ CICA TEC does exercise some control over the manner in which Respondent Employers conduct business. CICA TEC owns all the equipment, parts, and tools used by the unit employees, other than a truck provided by Respondent Oxford and hand tools provided by the mechanics. By providing the systems, equipment, tools, and parts, CICA TEC necessarily controls to some extent how the work is performed. Although T-5 is owned by the City of Chicago, the airlines' fees as members in CICA TEC pay for their use of the facility. All of the work performed by the unit employees is performed in and around the facility. Respondent Employers do not pay separately for office space for Farmer or Jensen, nor do they pay for use of the conference area in the control room. The executive director and his staff have access to the work areas of the unit employees and regularly communicate information between the bag room and the carriers that affects work flow such as the changes in flight schedules and backups or breakdown of the baggage sorting system. Most of this communication occurs between Jensen and the executive director as the employees' testimony that they rarely communicated directly with Ranttila when he was the executive director and less with his replacement. On the rare occasions that Ranttila directly requested employees perform work and the work was within their normal duties, they would perform the work. If it

¹³ Respondent Employers cite the DC Circuit's holding in *ABM On-site Services-West, Inc. v. NLRB*, 849 F.3d 1137, 1139 (D.C. Cir. 2017), that the NLRB's application of the more recent NMB precedent requiring a carrier to have more "meaningful control over personnel decisions" in order for RLA jurisdiction to be established is arbitrary and capricious without either the NLRB or the NMB having expressed a reason for their departure from prior precedent of applying the six factor test without this emphasis. Board reiterated its precedent of giving deference to the NMB and applying the NMB's new standard in *Allied Aviation Serv. Co. of New Jersey*, 362 NLRB 1392 (2015), enfd. by *Allied Aviation Service Co. of New Jersey v. NLRB*, 854 F.3d 55 (D.C. Cir. 2017). Thus, I am bound by NLRB precedent to apply the six-factor test with the emphasis on "meaningful control over personnel decisions" that evidences elements of control that are "greater than that found in a typical subcontractor relationship." *Allied Aviation Service Co. of New Jersey*, supra at 1392, 1392. Therefore, I give less weight to the NMB decisions cited by Respondent Employers all of which predate the NMB's decision in *Air Serv Corp.*, 33 NMB 272 (2006), that sets forth the six factors control test and the NMB's more recent decisions in *Menzies Aviation, Bags, Inc.*, and *Airway Cleaners* that are relied upon in NLRB decisions. Id.

was outside their normal duties, they would ask Jensen if they should perform the work. Mostly, the executive director monitors the operation of the baggage sorting system in order to communicate any delays directly to the carriers.

Section 3.01 of the Maintenance Agreement sets out the services Respondent Employers¹⁴ must provide under the agreement. In addition to the operation and maintenance of the equipment, it requires daily equipment inspections and additional inspections when directed, staffing plans upon request, monthly reports of services performed including staffing levels, and monthly spare parts inventory reports. The Maintenance Agreement also requires Respondent Employers to submit various other reports such as daily dispatch reports that shows when a maintenance issue was reported, who was assigned to address it, and when the issue was resolved; daily baggage handling reports; daily baggage handling alarm response logs; reports of breakdowns of the conveyor system. These reports are collected and conveyed to the executive director every couple of days. The Maintenance Agreement states that all of these reports are the property of CICA TEC and must be kept confidential unless CICA TEC approves their disclosure. Maintenance Agreement section 3.03 sets forth penalties for failure to perform the contract to stated standards, and section 8.02 allows CICA TEC to terminate the contract with 60-day notice but is silent to Respondent Employers ability to terminate the contract. Maintenance Agreement section 3.03 requires Respondent Employers to perform the services “with that degree of skill, care, and diligence normally exercised by contractors performing similar types of services in projects of a comparable scope and magnitude.”

Although the Maintenance Agreement affords CICA TEC the control over Respondent Employers as discussed above, I find that the record evidence does not support a finding that CICA TEC exercises meaningful control over personnel decisions and has no greater control over Respondent Employers than is found in a typical subcontracting relationship. Specific language in the contract clearly evidences CICA TEC’s intention to divest itself of control of Respondent Employers personnel matters. Section 3.02 states that “[n]either CICA TEC nor the Executive Director is a general contractor, and unless expressly provided for in this Agreement, does not have the obligations of a general contractor.” Section 3.05 clarifies that Respondent Employers “at all times will be an independent contractor with full and complete responsibility for all of its employees and representatives hereinafter collectively referred to the ‘Personnel.’ All such Personnel providing services to CICA TEC will at all times be employees of [Respondent Employers] and not of CICA TEC.”

CICA TEC does reserve the right to “remove any personnel from the performance of Services from any position upon material reason therefore given in writing.” The term “material reason” is not defined. The Maintenance Agreement provides

¹⁴ Although the Maintenance Agreement defines Contractor as Respondent Oxford, it requires that all of its terms be applied to any subcontractors of Respondent Oxford. Therefore, I have replaced the term Contractor in the Maintenance Agreement language to Respondent Employers.

that Respondent Employers’ hire competent employees and that the facility manager, assistant facility manager (a position that has not been filled), and supervisors must be approved by CICA TEC and such approval “will not be unreasonably withheld.” Again, the term “unreasonably” is not defined.

Prior to Respondent Employers takeover, Ranttila recommended but did not require Respondent Employers to hire Farmer and the rest of the existing staff. Oxford already employed Jensen and submitted his resume to CICA TEC for approval with no response. Farmers’ resume was not requested presumably since Ranttila had recommended him for the position. Despite Ranttila’s recommendation, Farmer was required to submit an application and pass physical and drug screenings before Oxford hired him. As for the unit employees, CICA TEC retains no control over their hiring process. Except for the encoders who were already employed and remained employed by Total after the takeover, all the other unit employees were required to meet the hiring criteria of their respective employers.

In the 3-1/2 years between when Respondent Employers took over and the date of the hearing, CICA TEC has never utilized its authority to remove any personnel.¹⁵ On one occasion, Ranttila provided surveillance video to Jensen that apparently showed an encoder failing to perform her job as expected. I find no evidence of record that Ranttila/CICA TEC demanded the encoder be discipline or recommended any discipline. The determination to discipline and the manner of discipline was decided solely by Respondent Employers officials.

The level of control over personnel decisions retained by CICA TEC is less than that retained by the carrier in *Airway Cleaners, LLC*, 41 NMB 262 (2014), where the NMB declined to assert jurisdiction under the RLA. The contract in *Airway Cleaners* contained the following language:

Supplier [Airway Cleaners] shall provide notice to American at least thirty days prior to any staffing changes and shall not materially change the composition of its staff without the written consent of the American general manager. All Supplier personnel shall record the start and end times of shifts actually worked by such employees in accordance with any procedures specified by American at each Station. All Supplier personnel must wear ID badges supplied by American or the airport operator. American shall have the right and option at any time and from time to time to interview and approve Station management and other employees of Supplier.

Id. at 265–266.

In *Airway Cleaners*, the carrier retained the right to interview and to approve the contractors’ management and other employees “at any time.” In the instant case, CICA TEC authority to withhold approval of Respondent Employers management selections is limited by a reasonable standard and it can only require the removal of personnel for a material reason. In *Airway*

¹⁵ One employee is no longer employed, not as a function of either the Respondent Employers or CICA TEC actions, but as the result of no longer being eligible for the security clearance needed to work at an international airport terminal because the employee entered a restricted area of the airport without authority.

Cleaners, as in the instant case, despite the language in the contract giving the carrier the right to intervene in staffing decisions, there was no evidence that the carrier had done so. Indeed, the staffing plan submitted by Respondent Employers as part of the bid process has not been followed. (R. Exh. 12, p. 13.) Thus, I find that the Maintenance Agreement provisions granting CICA TEC some control over Respondent Employers personnel does not give CICA TEC sufficient control over staffing levels, or the hiring, firing and discipline of that personnel to establish jurisdiction under the RLA, especially when the employees' other terms and condition of employment are controlled by Respondent Employers as discussed below.

Respondent Employers control the unit employees' wage rates, benefits, work shifts,¹⁶ work schedules, holidays, personal/sick days, overtime, and promotions. Respondent Employers' employees train new unit employees without input from CICA TEC. Oxford's safety trainer provides their safety training. Although the Maintenance Agreement allows for CICA TEC to approve Respondent Employers' safety training, there is no evidence in the record that CICA TEC has ever reviewed or approved the training. Total and Twin have provided their employees with employee handbooks. Respondent Employers have all informed the employees that they are utilizing the terms and conditions of employment set forth in the TWU contract. Other than the terminal rules, which focus on safety and security at the airport and are applicable to all individuals working there, CICA TEC has not provided the unit employees with any form of employee handbook or work rules. Furthermore, CICA TEC does not hold any of Respondent Employers' employees out to the public as its employees. Each of the Respondent Employers provides its employees with uniforms and badges with its name listed.

Even without the emphasis on control over personnel matters, I find that an analysis of the six factors do not weigh in favor of finding jurisdiction under the RLA. For example in *Swissport*, the NMB noted in finding jurisdiction under the RLA in the absence of control over hiring and firing, the carriers in that case had a significantly higher amount of control of other factors than in the instant case, including control over staffing levels, manuals and standards for employee performance, training, daily performance briefings to the carriers, and at least one carrier held the employees that performed work for it out to the public as its employees. *Swissport USA, Inc.*, 35 NMB 190, 195–196 (2008).

I find insufficient evidence that Respondent Employers' operations at T-5 are indirectly controlled or under common control with a carrier or carriers to an extent sufficient to invoke the jurisdiction under the RLA. Accordingly, I find, based upon the commerce facts discussed above, that Respondent Employers have been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the NLRA.

2. Joint Employers

The NLRB clarified its standard for determining if two or

more entities are joint employers in *Browning-Ferris Indus. of California, Inc.*, 362 NLRB 1599 (2015). The NLRB stated that employers may be found to be:

joint employers of a single work force if they are both employers within the meaning of the common law, and if they share or codetermine those matters governing the essential terms and conditions of employment. In evaluating the allocation and exercise of control in the workplace, we will consider the various ways in which joint employers may “share” control over terms and conditions of employment or “codetermine” them, as the Board and the courts have done in the past The right to control, in the common-law sense, is probative of joint-employer status, as is the actual exercise of control, whether direct or indirect.

Id. at slip op. 19. Therefore, it is sufficient that the joint employer has the authority, exercised or not, to control essential terms and conditions of employees. *Id.* The terms and conditions considered by the NLRB to be mandatory subjects of bargaining that include control over wages, hours, hiring, firing, discipline, supervision, direction, scheduling, number of workers, seniority, overtime, assigning work, and manner and method of work performance. *Id.*

For the reasons discussed below, I find that Oxford and Worldwide are joint employers of the dispatchers, mechanics, helpers, and foreman (if the position has been filled). I also find that Oxford and Total are joint employers of the encoders employed by Total, and that Oxford and Twin are joint employers of the encoders employed by Twin.

Oxford and Worldwide stipulated that they are joint employers, and the record confirms that they jointly possess control of the essential terms and conditions of employment for the dispatchers, mechanics, and helpers. Jensen and Farmer exercise independent authority to supervise, schedule hours, assign work, and direct the manner and method of work performed by these employees. In addition, Jensen has full authority to hire, fire, discipline, determine the number of employees necessary to perform the work, and grant overtime. The employees are paid by and receive their benefits from Worldwide. Thus, I find that Respondents Oxford and Worldwide are joint employers of the dispatchers, mechanics, helpers, and foreman (if the foreman position has been filled).

Respondent Employers contend that neither Oxford nor Worldwide are joint employers with Total or Twin. I disagree. I find that the record establishes that Oxford exercises control over almost every aspect of the essential terms and conditions of employment of the encoders employed by Total and Twin. Indeed, Total and Twin essentially provide only referral and payroll services for the encoders for Oxford. Rossi informed the presidents of Total and Twin that in order to be awarded the subcontract to perform the encoder work, the encoders' terms and conditions of employment must conform to the TWU contract. To meet this requirement, Total and Twin became signatory to the TWU contract without attempting to bargain any different terms or conditions of employment for the encoders, then applied these terms to the encoders even after TWU Local 504 withdrew interest in representing them.

Although all the encoders were employed by Total before

¹⁶ The Maintenance Agreement requires that Respondent Employers provide services 24 hours per day, 7 days per week, but Respondent Employers are able to set shifts as they see appropriate (i.e. 12-hour versus 8-hour shifts) as long as they meet the service requirements.

Oxford was awarded the Maintenance Agreement, Rossi informed Daniels and Carpenter the number of the employees each would provide pursuant to their individual subcontracts and initially told Carpenter which of the encoders she was to employ. Neither Total nor Twin have a supervisor that works at T-5. The only time Total and Twin supervisors interact with the encoders is when they deliver biweekly paychecks. I find no evidence of record that representatives for Twin or Total have ever addressed or adjusted any employee grievances or directed, evaluated, disciplined, or otherwise supervised the encoders during these interactions.

Farmer sets the encoders' work schedules. When necessary, Jensen requires encoders to work additional hours and authorizes overtime if required. Jensen directs encoders who are employed by Total to cover shifts or portions of shifts for encoders who are employed by Twin. Jensen directs dispatchers, mechanics and helpers to perform encoder work during peaks in work flow. When the encoders raised a grievance concerning the cleaning work they must perform, Jensen independently adjusted the time they were to perform that work resolving the grievance. Jensen has the authority to independently counsel the encoders for their conduct and has done so when he has noticed an encoder using a cell phone during working time. On the one occasion that an encoder was disciplined, Jensen presented the evidence of poor work performance to Total and Twin and his recommended discipline was implemented.

Based upon Oxford's extensive exercise of control over the terms and conditions of employment of the encoders employed by Total and Twin, I find Oxford and Total to be joint employers of the encoders employed by Total, and I find Oxford and Twin to be joint employers of the encoders employed by Twin.

3. Unfair Labor Practices

A. Burns Successor Issue and Alleged 8(a)(5) Refusal to Recognize and Bargain

An employer, which purchases or otherwise takes control of a unionized business of another employer, succeeds to the collective-bargaining obligation of the seller if the employer is a successor employer. To be a successor employer, the similarities between the employer's operations and its predecessor's operations must manifest a "substantial continuity between the enterprises" and the majority of the employer's employees in an appropriate bargaining unit must be former bargaining unit employees of the predecessor. The bargaining obligation of a successor employer begins when it has hired a "substantial and representative complement" of its work force. *NLRB v. Burns Security Services*, 406 U.S. 272, 40 (1972); *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987). The rule of successorship imposes an obligation on a new employer to bargain with the union of its predecessor. *Fall River Dyeing*, 406 US at 36. "If the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of 8(a)(5) is activated." *Id.* at 41-42.

Under *Burns* and its progeny, an employer that acquires a predecessor's operations succeeds to the predecessor's collective-bargaining obligations and is required to recognize and bargain with a union representing the predecessor's employees

when (1) there is a substantial continuity of operations after the takeover; (2) a majority of the successor's employees at the facility it acquired from the predecessor were former predecessor employees; and (3) a majority of the new employer's work force in an unit remains appropriate for collective bargaining under the successor's operations. See *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 43 (1987).

In the instant case, where the record undisputedly establishes that a majority of Respondent Employers' substantial and representative complement of employees were previously employed by the predecessor employer, the essential inquiry in applying the *Burns* successor standard is whether the new employer conducts essentially the same business as the predecessor. In other words, the issue is whether the similarities between the two operations manifest a substantial continuity between the enterprises. *Hydrolines Inc.*, 305 NLRB 416, 421 (1991), citing *Fall River Dyeing*, 482 U.S. at 41-43 and *Burns Security Services*, above 406 U.S. at 280, fn. 4. The factors considered are whether the business is essentially the same, whether the employees of the new company are doing the same jobs under the same supervisors, and whether the new entity has the same production process, produces the same products and has the same body of customers. These factors are assessed from the perspective of the employees to determine whether the retained employees view their job situation was essentially unaltered. *Fall River*, 482 U.S. at 43.

In the instant case, the record establishes, and I find, that a majority of Respondent Employers employees were formerly employees of ABM and that their jobs remained essentially unaltered. The transition between the companies occurred overnight. ABM ceased its operations, including its subcontracting of the encoder work to Total, on June 30, and Oxford/Worldwide commenced operations, including its subcontracting of the encoder work to Total, on July 1. Oxford/Worldwide admits that it assumed the contract that ABM previously performed and started performing the dispatcher, mechanic, and helper work without a hiatus in operations. (GC Exh. 1(o), par. IX(a) and (b).) The dispatchers, mechanics, and helpers performed the same work, in the same manner, on the same equipment, using the same tools, except for a truck provided by Oxford, in the same location, and for the same customers as they did under ABM. The employees testified that the work they perform has remained virtually unchanged from the work that they performed for ABM. Although Oxford/Worldwide employed Jensen as a new manager over all of its operations at T-5, it also employed Farmer, ABM's working foreman, as the employees' direct supervisor. The record contains no evidence that Jensen substantially changed any aspect of the employees' work other than an adjustment in shift schedules. Oxford/Worldwide also admit that 13 out of its 21 dispatchers, mechanics, and helpers were ABM employees prior to the transition and this complement of employees has remained substantially unchanged in the 3-year interim.

Similarly, Oxford/Total initially continued to employee all of the encoders employed by Total subject to a subcontract agreement with ABM prior to the takeover and this complement of employees has also remained substantially unchanged in the 3-year interim. About a month after the takeover, 6 of

the 14 encoders were transferred to the employment of Oxford/Twin.¹⁷ Regardless whether the encoders were assigned to work for Respondent Total or Respondent Twin, the record establishes that the encoders performed the same work, in the same manner, on the same equipment, using the same tools, in the same location, and for the same customer(s) as they did under the subcontract with ABM. Farmer prepares their schedules and they report to Jensen, who counsels them, adjusts their grievances, assigns them overtime, and effectively recommends their discipline.

Once a substantial continuity of operations and majority status is found, a successor's bargaining obligation requires that the unit remains appropriate for collective bargaining under the successor's operations. In the instant case, the dispatchers, helpers, mechanics and encoders all perform work relating to the baggage handling system. The work that the mechanics, dispatchers, and helpers perform relating to the jet ways and associated electrical, water, and air systems, does not necessitate a separate unit from the encoders. This is especially true here where the employees share common supervision and interchange among job classifications. In the absence of any contention by the parties and based upon the record, I find that the unit employees still enjoy a community-of-interest. I further find that even though the employees are supplied by three separate companies, Worldwide, Total, and Twin, for Oxford's use in fulfilling its contract with CICA TEC, the unit employees still share a community-of-interest. See, *Miller & Anderson, Inc.*, 364 NLRB No. 39 (2016) (finding employees who all working for one "user" employer and otherwise share a community-of-interest constitute an appropriate unit for collective bargaining regardless of by which of the joint employers they are employed.)

Respondent Employers and TWU Local 504 content that the employees at T-5 are appropriately in the broader unit under the certification pursuant to the RLA of all of Worldwide's employees, who perform related work at various airports throughout the United States. As discussed above, I am unconvinced by Respondent's argument that the NMB's prior certification of TWU Local 504 as the bargaining representative of Respondent Worldwide's employees performing the same or similar jobs at other airports requires the employees in the instant case to be part of that unit without first finding, which I do not find, that RLA jurisdiction is appropriate in this case.

Furthermore, the NLRB has long found a single-facility unit to be presumptively appropriate and the party opposing it has a heavy burden to rebut such a presumption. See *Trane*, 339 NLRB 866 (2003); *Budget Rent-A-Car Systems*, 337 NLRB 884 (2002). The appropriateness of a single-facility unit is different in the context of successorship than in an initial representation hearing, especially in situations, like the instant case, where employees had historically been represented in a single-

location unit. *Always E. Transportation, Inc. & Int'l Bhd. of Teamsters, Local 445*, 365 NLRB No. 71, slip op. 5 (2017). To determine whether the presumption has been rebutted, the Board examines a number of community-of-interest factors: (1) central control over daily operations and labor relations, including the extent of local autonomy, (2) similarity of skills, functions, and working conditions, (3) degree of employee interchange, (4) distance between locations, and (5) bargaining history, if any." Id. at slip op. 4. See also, *J&L Plate*, 310 NLRB 429, 429 (1993). Other than evidence that the dispatchers, mechanics, and helpers are provided payroll and human resource services by Worldwide, Respondent Employers and TWU Local 504 presented no evidence to support factors 1 through 4. With regard to the fifth factor, for the reasons discussed above, I reject Respondent Employers' contention that Worldwide's bargaining history under the RLA controls in this situation. Conversely, I do give weight to the bargaining history of the unit employees with IOUE Local 399 as a single-facility unit. Thus, I find that Respondent Employers failed to adduce sufficient evidence to rebut the presumption that the single-facility unit of employees employed by Respondent Employers at T-5 is an appropriate unit for collective bargaining under the NLRA in this case.

Accordingly, I find that Respondent Employers are *Burns* successors.

B. Failure to Recognize and Bargain

On October 15, 2012, after learning that Oxford had been awarded the Maintenance Agreement and had informed bargaining unit employees of its interest in retaining them to perform the work, IOUE Local 399 representative McGinty contacted Cunningham, who had attended the employee meeting, and requested to bargain with Respondent Oxford/ Worldwide on behalf of the employees. Cunningham rejected McGinty's assertion that IOUE Local 399 was the bargaining representative of the unit and verified that position in an email to McGinty. IOUE Local 399 continued to assert its demand to bargain by initially filing charges in March that were found premature and then again in October in the instant cases. Thus, IOUE Local 399's initial demand for recognition and bargaining was prematurely made on October 15, 2012. Yet, through this demand and its subsequent filing of charges, IOUE Local 399 established a "continuing demand" which remained in effect until Respondent Employers employed a substantial and representative complement of its predecessor's employees to perform substantially the same work at T-5 starting July 1. See *Fall River Dyeing*, 482 U.S. at 52-53; *Williams Enterprises*, 312 NLRB 937, 938-939 (1993), enfd. 50 F.3d 1280, 1286 (4th Cir. 1995); *Sterling Processing Corp.*, 291 NLRB 208, 217 (1988). Accordingly, I conclude that Worldwide, Total, and Twin, as joint employers with Oxford in regards to their respective employees, had the obligation to honor the IOUE Local 399's demands for recognition starting on July 1, 2013,¹⁸ be-

¹⁷ The short hiatus between the takeover and the actual transfer of encoders from Total to Twin does not exempt Twin from being a *Burns* successor. Twin signed the subcontract with Oxford in March and became signatory to the TWU contract in June. Therefore, the structure was in place before the takeover on July 1, but the transfer of employees did not occur until approximately 3 to 4 weeks later making Twin a *Burns* successor once the transfer of employees had occurred.

¹⁸ The record is unclear as to exactly when between July 1 and about August 1, 2013, Respondent Twin started employing the six encoders that it was assigned. Thus, more accurate payroll records may need to be utilized to determine the exact date that the obligation as to these

cause from that date forward they employed a substantial and representative complement of their work force in an appropriate bargaining unit, and was aware of IOUE Local 399's demand for recognition.

Thus, I find that Respondent Employers are thereby obliged to meet and bargain with the IOUE Local 399 as the exclusive collective-bargaining representative of their employees.¹⁹

C. Unilateral Changes

In *Burns*, the Supreme Court enunciated the principle that, "a successor employer is ordinarily free to set initial terms on which it will hire employees of a predecessor" without first bargaining with the employees' bargaining representative, except in "instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit." *Spruce Up Corp.*, 209 NLRB 194, 195 (1974). The NLRB clarified in *Spruce Up Corp.* that if a successor employer who offers all of its predecessor's employees positions under substantially different terms and conditions of employment, especially if those terms and conditions of employment are significantly less favorable to the employees, then the employer is not making it "perfectly clear" that it plans to retain all of the employees by making them an offer they are unlikely to refuse. In the instant case, I find that Respondent Employers are not "perfectly clear" successors because their offer of continued employment was with significantly less favorable terms and conditions, and thus, Respondent Employers did not make it "perfectly clear" that they intended to retain all of the unit employees.

The NLRB has found other exceptions where a *Burns* suc-

cessor is not privileged to set initial terms and conditions of employment. In *U.S. Marine Corp.*, 293 NLRB 669, 672 (1989), for example, the Board held that:

an employer—like the Respondents—that unlawfully discriminates in its hiring in order to evade its obligations as a successor does not have the *Burns* right to set initial terms of employment without first consulting with the Union. The Respondents forfeited any right they may have had as a successor to impose initial terms when they embarked on their deliberate scheme to avoid bargaining with the Union by their discriminatory hiring practices.²⁰ This equitable doctrine, which arose in the context of defining an appropriate remedy for an employer that sought to avoid the successor's bargaining obligation by refusing to hire applicants from the predecessor's unionized work force, is equally relevant to the allegation here of unlawful unilateral changes. The fundamental premise for the forfeiture doctrine is that it would be contrary to statutory policy to "confer *Burns* rights on an employer that has not conducted itself like a lawful *Burns* successor because it has unlawfully blocked the process by which the obligations and rights of such a successor are incurred." *State Distributing Co.*, 282 NLRB 1048, 1049 (1987). In other words, the *Burns* right to set initial terms and conditions of employment must be understood in the context of a successor employer that will recognize the affected unit employees' collective-bargaining representative and enter into good-faith negotiations with that union about those terms and conditions.

Advanced Stretchforming International, Inc., 323 NLRB 529, 530 (1997). In the instant case, Respondent Employers refused to recognize and enter into good-faith negotiations with the unit employees' long-term collective-bargaining representative, IOUE Local 399. Instead, they required the unit employees to sign, as a condition of employment, dues authorization forms allowing Respondent Employers to deduct membership dues from their pay and remitted those dues to TWU Local 504.²⁰ Thus, Respondent Employers forfeited the right to set initial terms and conditions of employment by not recognizing and bargaining with IOUE Local 399.

Accordingly, I find that Respondent Employers unlawfully unilaterally changed the unit employee's terms and conditions of employment by failing to continue the terms and conditions of employment set forth in the IOUE contract and by changing other terms and conditions of employment enjoyed by the employees but not specifically set forth in the IOUE contract. These unilateral changes include:

- reducing wages;
- changing the mechanics' and dispatchers' pay schedule from weekly to biweekly;
- changing shift schedules;
- changing employee seniority;
- eliminating 401(k) retirement plan and traditional

¹⁹ Having found Total and Twin to be joint-employers with Oxford, I reject their argument that the allegations of the complaint pertaining to them are barred by the statute of limitations set forth in Section 10(b) of the NLRA because they were not named in the charges until the amended charges filed on November 18, and December 7, 2015. As the NLRB held in *Mar Del Plata Condo.*, "the liability of [one joint-employer] cannot be considered separate and apart from that of its [joint-employer]. . . . 'As joint employers, each is responsible for the conduct of the other and whatever unlawful practices are engaged in by the one must be deemed to have been committed by both.... [T]he nature of the joint-employer relationship is such that the charge against [one joint employer] also constitute[s] a charge against [the other].'" *Mar Del Plata Condo.*, 282 NLRB 1012, 1012, fn. 3 (1987)(quoting *Ref-Chem Co.*, 169 NLRB 376, 380 (1968), enf. denied on other grounds 418 F.2d 127 (5th Cir. 1969). See also, *Photo-Sonics, Inc.*, 254 NLRB 567, 570 fn. 2 (1981), enf. 678 F.2d 121 (9th Cir. 1982). "Furthermore, the failure to recognize and bargain is a continual violation. It is settled law that a refusal to bargain, persisted in after having been made, constitutes a continuing violation of a continuing obligation to bargain. If, therefore, it should be found herein that prior to the period of limitation an obligation to bargain existed and that a refusal to comply had occurred, it follows by application of established principles that the obligation continues into the six-month period preceding the filing of the instant charge and that the refusal continues also." *Hartz-Kirkpatrick Const. Co., Inc.*, 195 NLRB 863, 865 (1972). Therefore, I conclude and find that Section 10(b) of the NLRA, upon the facts found herein, does not preclude a finding of a violation of Section 8(a)(5) by Total and Twin as discussed herein.

²⁰ Respondents Total and Twin ceased deducting and remitting dues to TWU Local 504 in November 2015 when TWU Local 504 for some unexplained reason disclaimed interest in representing the encoders but has continued to represent the dispatchers, mechanics, and helpers. Tr. 223, 246; GC Exh. 11.)

- pension benefits;
- changing health insurance benefits and premiums;
- reducing vacation leave, sick leave and holidays;
- changing overtime policies;
- and altering job classifications of the mechanics.²¹

D. Respondent Employers Violated Section 8(a)(2) and (3) and TWU Local 504 Violated Section 8(b)(1)(A) and (2) of the NLRA

The Board has consistently found that an employer violates Section 8(a)(1), (2), and (3) of the NLRA by recognizing a union as the exclusive collective-bargaining representative of its employees, and by entering into, maintaining, and enforcing a collective-bargaining agreement containing union-security and dues-checkoff provisions with the union, at a time when the union did not represent a majority of the employees in the unit. Equally, the union's acceptance of the dues and acceptance of collective-bargaining representative status violates Section 8(b)(1)(A) and (2) of the NLRA. *Regency Grande Nursing & Rehab. Ctr. & SEIU 1199 New Jersey Health Care Union & Local 300s, Prod. Serv. & Sales Dist. Council, a/w United Food & Commercial Workers Int'l Union.*, 347 NLRB 1143 (2006); *Polyclinic Medical Center of Harrisburg*, 315 NLRB 1257 (1995); *Ladies Garment Workers (Bernard-Altmann Texas Corp.) v. NLRB*, 366 U.S. 731 (1961).

In the instant case, the unit employees were represented by IUOE Local 399, which had a collective-bargaining agreement with ABM effective from October 1, 2011, through September 30, 2014, at the time that Respondent Employers took over the operations on July 1, 2013. I find no evidence that IUOE Local 399 had lost majority support of the unit employees or that TWU Local 504 enjoyed any support by the unit employees. Therefore, I find Respondent Employers violated Section 8(a)(2) and (3) of the NLRA by recognizing TWU Local 504 as the collective-bargaining representative of the unit employees and by entering into, maintaining, and enforcing a collective-bargaining agreement containing union-security and dues-checkoff provisions with TWU Local 504 with regard to the unit employees, at a time when TWU Local 504 did not have the support of a majority of the unit employees. Accordingly, I also find that TWU Local 504 violated the Section 8(b)(1)(A) and (2) of the NLRA by acting as the collective-bargaining representative of the unit employees and by entering into, maintaining, and enforcing a collective-bargaining agreement containing union-security and dues-checkoff provisions with Respondent Employers with regard to the unit employees, at a time when TWU Local 504 did not have the support of a majority of the unit employees.

CONCLUSIONS OF LAW

1. Respondents Oxford Electronics, Inc., d/b/a Oxford Airport Technical Services (Respondent Oxford) and Worldwide Flight Services, Inc. (Respondent Worldwide), Total Facility Maintenance, Inc. (Respondent Total), and Twin Staffing, Inc.

(Respondent Twin), collectively referred to herein as Respondent Employers, are employers engaged in commerce within the meaning of Section 2(6) and 2(7) of the NLRA.

2. International Union of Operating Engineers Local 399, AFL-CIO (Charging Party or IUOE Local 399) and Transportation Workers Union of America—Local 504, AFL-CIO, (Respondent Union or TWU Local 504) are labor organizations within the meaning of Section 2(5) of the NLRA.

3. IUOE Local 399 is, and at all material times has been, the exclusive bargaining representative for the following appropriate unit of employees employed by Respondent Oxford as a joint employer with Respondents Worldwide, Total and Twin at Terminal 5 of the Chicago O'Hare airport in Illinois:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, encoders, lead encoders, and working foremen.

4. Since July 1, 2013, Respondents Oxford and Worldwide have been joint employers of the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, working foreman (if the position is filled), and helper unit employees.

5. Since July 1, 2013, Respondents Oxford and Total have been joint employers of the encoder unit employees that were employed by Total for any time period that they were employed by Respondent Total; and Respondents Oxford and Twin have been joint employers of the encoder unit employees who were employed by Respondent Twin for any time period that they were employed by Respondent Twin.

6. Respondents Oxford, Worldwide, Total and Twin violated Section 8(a)(1) of the NLRA by conditioning the unit employees' employment on signing membership cards and dues check-off authorizations for TWU Local 504.

7. Respondents Oxford, Worldwide, Total and Twin, as Burns successors, violated Section 8(a)(5) and (1) of the NLRA by withdrawing recognition from IUOE Local 399 as the exclusive collective-bargaining representative of the unit employees and thereafter continuously failing and refusing to bargain on request with IUOE Local 399 as the exclusive collective-bargaining representative of their unit employees concerning wages, hours, and other terms and conditions of employment.

8. Respondents Oxford and Worldwide jointly and severally violated Section 8(a)(5) and (1) of the NLRA by altering the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, working foreman (if the position is filled), and helper unit employees' terms and conditions of employment, including their wages and fringe-benefit provisions, pursuant to an unlawful application of the TWU contract, without first notifying IUOE Local 399 and bargaining to agreement or im-

²¹ As discussed above, I do not find sufficient evidence of an unlawful unilateral change in the uniform replacement policy or shift schedules.

passee regarding such changes in the wages, hours, and working conditions of the unit employees.

9. Respondents Oxford and Total jointly and severally violated Section 8(a)(5) and (1) of the NLRA by altering Respondent Total's encoder and lead encoder unit employees' terms and conditions of employment, including their wages and fringe-benefit provisions, pursuant to an unlawful application of the TWU contract, without first notifying IUOE Local 399 and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

10. The Respondents Oxford and Twin jointly and severally violated Section 8(a)(5) and (1) of the NLRA by altering Respondent Twin's encoder and lead encoder unit employees', employed by Respondent Twin's, terms and conditions of employment, including their wages and fringe-benefit provisions, pursuant to an unlawful application of the TWU contract, without first notifying IUOE Local 399 and bargaining to agreement or impasse regarding such changes in the wages, hours, and working conditions of the unit employees.

11. Respondents Oxford, Worldwide, Total and Twin have violated Section 8(a)(3), (2) and (1) of the NLRA by granting assistance to the TWU Local 504 and recognizing it as the exclusive collective-bargaining representative of the unit employees, and by applying the terms and conditions of employment of the TWU contract, including its union-security provisions, to the unit employees, at a time when the TWU Local 504 did not represent an unassisted and uncoerced majority of the employees in the unit, and when IUOE Local 399 was the exclusive collective-bargaining representative of the unit employees.

12. TWU Local 504 violated Section 8(b)(1)(A) and (2) by accepting recognition from Respondents Oxford, Worldwide, Total and Twin as the exclusive collective-bargaining representative of the unit employees, and by agreeing to the application of the TWU contract, including its union-security provisions, to the unit employees, at a time when it did not represent an uncoerced majority of the employees in the unit when IUOE Local 399 was the exclusive collective-bargaining representative of the employees in the unit.

13. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondents Oxford, Worldwide, Total, Twin, and TWU Local 504 have engaged in certain unfair labor practices, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondents Oxford, Worldwide, Total, and Twin shall be ordered to withdraw recognition from TWU Local 504 as the collective-bargaining representative of the unit employees and cease and desist applying the TWU contract, including its union-security provisions, and any extension, renewal, or modification thereof, to the unit employees. Likewise, TWU Local 504 shall be ordered to cease accepting Respondent Employers' recognition.

Respondent Employers also will be ordered to recognize and, on request, bargain with IUOE Local 399 as the exclusive bar-

gaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

Additionally, Respondent Employers shall, on request of IUOE Local 399, rescind any departure from terms and conditions of employment that existed before Respondent Employers' takeover of performance of the Maintenance Agreement with CICA TEC at Terminal 5 of the O'Hare International Airport in Illinois and retroactively, jointly and severally, for their respective employees, restore preexisting terms and conditions of employment including wages, overtime wages, mechanics' job classifications, seniority, 401(k) benefits, health insurance benefits, employee pension benefits, vacation and sick leave, holidays and personal days, payments to IUOE Local 399 employee training fund, and weekly pay schedule that the unit employees enjoyed absent Respondent Employers' unlawful conduct, until Respondent Employers' negotiate in good faith with IUOE Local 399 to agreement or to impasse. Backpay shall be computed as in *Ogle Protection Service*, 183 NLRB 682 (1970) enfd. 444 F.3d 502 (6th Cir. 1971), plus interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Respondent Employers additionally shall be ordered to jointly and severally (1) compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum and (2) file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters, as set forth in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), for their respective employees. Consistent with the Board holding in *AdvoServ of N.J.*, 363 NLRB No. 143 (2016), Respondent Employers shall be required within 21 days of the date the amount of backpay is fixed, either by agreement or NLRB order, to file its report allocating backpay with the Regional Director and not with the Social Security Administration. The Respondent will be required to allocate backpay to the appropriate calendar years only.

Further, Respondent Employers, with respect to their respective employees as joint employers as found herein, and TWU Local 504 shall be ordered as jointly and severally liable for reimbursing all claims of present and former unit employees who were coerced to join TWU Local 504 on or since July 1, 2013, for any initiation fees, periodic dues, assessments, or any other monies they may have paid or that may have been withheld from their pay pursuant to the TWU contract, together with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

I also shall order Respondent Employers and TWU Local 504 to post the Board's standard Notice to Employees and Notice to Employees and Members, respectively.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.²²

²² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted.

ORDER

A. Respondent Oxford and Respondent Worldwide, as joint employers, their officers, agents, successors, and assigns, as successors to ABM Facility Services, Inc., shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Union of Operating Engineers Local 399, AFL-CIO, (IUOE Local 399) as the exclusive collective-bargaining representative of the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman employees in the following appropriate bargaining unit concerning wages, hours, and other terms and conditions of employment:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, working foremen, encoders, and lead encoders.

(b) Withdrawing recognition from IUOE Local 399 as the exclusive collective-bargaining representative of unit employees.

(c) Granting assistance to Transportation Workers Union of America—Local 504, AFL-CIO (TWU Local 504) and recognizing it as the exclusive collective-bargaining representative of the unit employees at a time when TWU Local 504 did not represent an unassisted and uncoerced majority of the employees in the unit.

(d) Applying the terms and conditions of employment of the collective-bargaining agreement between Respondent Worldwide and TWU Local 504 (TWU contract), including its union-security provisions, to the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees at a time when TWU Local 504 did not represent an unassisted and uncoerced majority of the employees in the unit.

(e) Bypassing IUOE Local 399 and directly offering dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees continued employment in the unit on the basis of terms and conditions of employment different from those enjoyed under predecessor ABM Facility Services, Inc. and on condition that they be represented by TWU Local 504.

(f) Changing the terms and conditions of employment of the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees without first notifying IUOE Local 399 and giving it an opportunity to bargain.

(g) Discriminating against dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees in regard to their hire or tenure of employment in order to encourage membership in TWU Local 399.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the NLRA.

(a) Withdraw and withhold all recognition from TWU Local 504 as the exclusive collective-bargaining representative of the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees.

(b) Refrain from applying the terms and conditions of employment of a collective-bargaining agreement with TWU Local 504, including its union-security provisions, to the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees.

(c) Jointly and severally with TWU Local 504, reimburse all dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the TWU contract with interest.

(d) Notify IUOE Local 399 in writing of all changes made to the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees' terms and conditions of employment on and after July 1, 2013, and, on request of IUOE Local 399, rescind any or all unlawfully imposed changes and restore terms and conditions of employment retroactively to July 1, 2013.

(e) Jointly and severally make the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees whole for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth above in the remedy section.

(f) Jointly and severally compensate the dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees for any adverse income tax consequences of receiving their backpay in one lump sum, and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the NLRB or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at Terminal 5 of the Chicago O'Hare International Airport in Illinois, copies of the attached notice marked "Appendix A", on forms provided by the Regional Director for Region 13, after being

ed by the Board and all objections to them shall be deemed waived for all purposes.

jointly signed by the authorized representatives of Respondents Oxford and Worldwide, shall be posted by Respondents Oxford and Worldwide and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if Respondents Oxford and/or Worldwide customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondents Oxford and Worldwide to ensure that the notices are not altered, defaced, or covered by any other material. If Respondents Oxford and Worldwide have gone out of business or closed the facility involved in this proceeding, Respondents Oxford and Worldwide shall jointly duplicate and mail, at their own expense, a copy of the notice to all current and former dispatcher, lead dispatcher, mechanic, senior mechanic, lead mechanic, helper, and working foreman unit employees employed by Respondents Oxford and Worldwide at Terminal 5 of the Chicago O'Hare International Airport in Illinois at any time since July 1, 2013.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of responsible officials on a form provided by the Region attesting to the steps that Respondents Oxford and Worldwide have taken to comply.

B. Respondent Oxford and Respondent Total, as joint employers, their officers, agents, successors, and assigns, as successors to ABM Facility Services, Inc., and its subcontract with Respondent Total, shall

1. Cease and desist from

(a) Failing and Refusing to recognize and bargain with International Union of Operating Engineers Local 399, AFL-CIO (IUOE Local 399) as the exclusive collective-bargaining representative of the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013, in the following appropriate bargaining unit concerning wages, hours, and other terms and conditions of employment:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, working foremen, encoders, and lead encoders.

(b) Withdrawing recognition from IUOE Local 399 as the exclusive collective-bargaining representative of encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013, granting assistance to Transportation

Workers Union of America—Local 504, AFL-CIO (TWU Local 504) and recognizing it as the exclusive collective-bargaining representative of the encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013, at a time when TWU Local 504 did not represent an unassisted and uncoerced majority of the employees in the unit.

(c) Applying the terms and conditions of employment of the collective-bargaining agreement between Respondent Worldwide and TWU Local 504 (TWU contract), including its union-security provisions, to the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013, at a time when TWU Local 504 did not represent an unassisted and uncoerced majority of the employees in the unit.

(d) Bypassing IOUE Local 399 and directly offering encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013, continued employment in the unit on the basis of terms and conditions of employment different from those enjoyed under predecessor ABM Facility Services, Inc. and/or its subcontract with Respondents Oxford and Total, as joint employers, and on condition that they be represented by TWU Local 504.

(e) Changing the terms and conditions of employment of the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013, without first notifying IUOE Local 399 and giving it an opportunity to bargain.

(f) Discriminating against encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013, in regard to their hire or tenure of employment in order to encourage membership in TWU Local 504.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the NLRA.

(a) Withdraw and withhold all recognition from TWU Local 504 as the exclusive collective-bargaining representative of the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013.

(b) Refrain from applying the terms and conditions of employment of a collective-bargaining agreement with TWU Local 504, including its union-security provisions, to the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013.

(c) Jointly and severally with TWU Local 504, reimburse all encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time during which they were employed by Respondents Oxford and Total, as joint employers, since July 1, 2013, for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the TWU contract with interest.

(d) Notify IUOE Local 399 in writing of all changes made to the terms and conditions of employment on and after July 1, 2013, of the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time since July 1, 2013, and, on request of IUOE Local 399, rescind any or all unlawfully imposed changes and restore terms and conditions of employment retroactively to July 1, 2013.

(e) Jointly and severally make the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time during which they were employed by Respondents Oxford and Total, as joint employers, since July 1, 2013, whole for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth above in the remedy section.

(f) Jointly and severally compensate the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Total, as joint employers, for any period of time during which they were employed by Respondents Oxford and Total, as joint employers, since July 1, 2013, for any adverse income tax consequences of receiving their backpay in one lump sum, and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the NLRB or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at Terminal 5 of the Chicago O'Hare International Airport in Illinois, copies of the attached notice marked "Appendix B," on forms provided by the Regional Director for Region 13, after being jointly signed by the authorized representatives of Respondents Oxford and Total, shall be posted by Respondents Oxford and Total and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if Respondents Oxford and/or Total customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondents Oxford and Total to ensure that the notices are not altered, defaced, or covered by any other material. If Respondents Oxford and Total have gone out of business or closed the facility involved in this proceeding, Respondents Oxford and Total shall jointly duplicate and mail, at their own expense, a copy of the notice to all current and former encoder and lead encoder unit employees, who were employed by Respondent Total, for the period of time during which they were employed by Respondent Total since July 1, 2013, at Terminal 5 of the Chicago O'Hare International Airport in Illinois at any time since July 1, 2013.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of responsible officials on a form provided by the Region attesting to the steps that Respondents Oxford and Total have taken to comply.

C. Respondent Oxford and Respondent Twin, as joint employers, their officers, agents, successors, and assigns, as successors to ABM Facility Services, Inc., and its subcontract with Respondent Total, shall

1. Cease and desist from

(a) Failing and Refusing to recognize and bargain with International Union of Operating Engineers Local 399, AFL-CIO (IUOE Local 399) as the exclusive collective-bargaining representative of the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013, in the following appropriate bargaining unit concerning wages, hours, and other terms and conditions of employment:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, working foremen, encoders, and lead encoders.

(b) Withdrawing recognition from IUOE Local 399 as the exclusive collective-bargaining representative of encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013, granting assistance to Transportation Workers Union of America—Local 504, AFL-CIO, (TWU Local 504) and recognizing it as the exclusive collective-bargaining representative of the encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013, at a time when TWU Local 504 did not represent an unassisted and uncoerced majority of the employees in the unit.

(c) Applying the terms and conditions of employment of the collective-bargaining agreement between Respondent Worldwide and TWU Local 504 (TWU contract), including its union-security provisions, to the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013, at a time when TWU Local 504 did not represent an unassisted and uncoerced majority of the employees in the unit.

(d) Bypassing IUOE Local 399 and directly offering encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013, continued employment in the unit on the basis of terms and conditions of employment different from those enjoyed under predecessor ABM Facility Ser-

vices, Inc. and/or its subcontract with Respondents Oxford and Twin, as joint employers, and on condition that they be represented by TWU Local 504.

(e) Changing the terms and conditions of employment of the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013, without first notifying IUOE Local 399 and giving it an opportunity to bargain.

(f) Discriminating against encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013, in regard to their hire or tenure of employment in order to encourage membership in TWU Local 504.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the NLRB.

(a) Withdraw and withhold all recognition from TWU Local 504 as the exclusive collective-bargaining representative of the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013.

(b) Refrain from applying the terms and conditions of employment of a collective-bargaining agreement with TWU Local 504, including its union-security provisions, to the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013.

(c) Jointly and severally with TWU Local 504, reimburse all encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time during which they were employed by Respondents Oxford and Total, as joint employers, since July 1, 2013, for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the TWU contract with interest.

(d) Notify IUOE Local 399 in writing of all changes made to the terms and conditions of employment on and after July 1, 2013, of the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time since July 1, 2013, and, on request of IUOE Local 399, rescind any or all unlawfully imposed changes and restore terms and conditions of employment retroactively to July 1, 2013.

(e) Jointly and severally make the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time during which they were employed by Respondents Oxford and Twin, as joint employers, since July 1, 2013, whole for any losses sustained due to the unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment in the manner set forth above in the remedy section.

(f) Jointly and severally compensate the encoder and lead encoder unit employees, who were employed by Respondents Oxford and Twin, as joint employers, for any period of time during which they were employed by Respondents Oxford and Twin, as joint employers, since July 1, 2013, for any adverse

income tax consequences of receiving their backpay in one lump sum, and file with the Regional Director for Region 13, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the NLRB or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at Terminal 5 of the Chicago O'Hare International Airport in Illinois, copies of the attached notice marked "Appendix C," on forms provided by the Regional Director for Region 13, after being jointly signed by the authorized representatives of Respondents Oxford and Twin, shall be posted by Respondents Oxford and Twin and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if Respondents Oxford and/or Twin customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondents Oxford and Twin to ensure that the notices are not altered, defaced, or covered by any other material. If Respondents Oxford and Twin have gone out of business or closed the facility involved in this proceeding, Respondents Oxford and Twin shall jointly duplicate and mail, at their own expense, a copy of the notice to all current and former encoder and lead encoder unit employees, who were employed by Respondent Twin, for the period of time during which they were employed by Respondent Twin since July 1, 2013, at Terminal 5 of the Chicago O'Hare International Airport in Illinois at any time since July 1, 2013.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of responsible officials on a form provided by the Region attesting to the steps that Respondents Oxford and Twin have taken to comply.

D. Respondent TWU Local 504, its officers, agents and representatives, shall

1. Cease and desist from

(a) Accepting assistance and recognition from Respondents Oxford, Worldwide, Total, and Twin as the collective-bargaining representative of unit employees at a time when TWU-Local 504 did not represent an uncoerced majority of the employees in the unit.

(b) Maintaining and enforcing the TWU contract, or any extension, renewal, or modification thereof, including its union-security provisions, so as to cover the unit employees.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Decline recognition as the exclusive collective-bargaining representative of employees in the following unit,

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, working foremen, encoders, and lead encoders.

(b) Jointly and severally with Respondents Oxford, Worldwide, Total and Twin reimburse all present and former unit employees for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the TWU contract, with interest.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its headquarters and at its offices and meeting halls in Chicago, Illinois, copies of the attached notice marked "Appendix D." Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by Respondent TWU Local 504's authorized representative, shall be posted by Respondent TWU Local 504 and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if Respondent TWU Local 504 customarily communicates with its members by such means. Reasonable steps shall be taken by Respondent TWU Local 504 to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Furnish the Regional Director with signed copies of Respondent TWU Local 504's notice to members and employees marked "Appendix D" for posting by Respondents Oxford and Worldwide at Terminal 5 of the Chicago O'Hare International Airport in Illinois where notices to employees are customarily posted. Copies of the notice, to be furnished by the Regional Director, shall be signed and returned to the Regional Director promptly.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent TWU Local 504 has taken to comply.

Dated, Washington, D.C. May 31, 2017

APPENDIX A

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with the International Union of Operating Engineers Local 399, AFL-CIO, (IUOE Local 399) as the exclusive collective-bargaining representative of our employees who hold the positions of dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, and working foremen in the following unit:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, working foremen, encoders, and lead encoders.

WE WILL NOT withdraw recognition from IUOE Local 399 as your exclusive collective-bargaining representative.

WE WILL NOT grant assistance to Transportation Workers Union of America—Local 504, AFL-CIO, (TWU Local 504) or recognize it as your exclusive collective-bargaining representative at a time when TWU Local 504 does not represent an unassisted and uncoerced majority of the employees in the unit.

WE WILL NOT apply the terms and conditions of employment of the collective-bargaining agreement with TWU Local 504 (TWU contract), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to you at a time when TWU Local 504 does not represent an unassisted and uncoerced majority of employees in the unit.

WE WILL NOT change your terms and conditions of employment without first notifying IUOE Local 399 and giving it an opportunity to bargain.

WE WILL NOT discriminate against you in regard to your hire or tenure of employment in order to encourage membership in TWU Local 504.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL withdraw and withhold all recognition from TWU Local 504 as your exclusive collective-bargaining representative, unless and until TWU Local 504 has been certified by the National Labor Relations Board as your exclusive collective-bargaining representative.

WE WILL refrain from applying to you the terms and conditions of employment of a collective-bargaining agreement with TWU Local 504, including its union-security provisions.

WE WILL, jointly and severally, with TWU Local 504, reimburse you for all initiation fees, dues, and other moneys paid by you or withheld from your wages pursuant to the TWU contract, with interest.

WE WILL recognize and, on request, bargain at reasonable times and places and in good faith with IUOE Local 399 as the exclusive collective-bargaining representative of our employees in the described appropriate unit concerning wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed collective-bargaining agreement.

WE WILL notify IUOE Local 399 in writing of any changes made to your terms and conditions of employment on or after July 1, 2013, and WE WILL, on the request of IUOE Local 399, rescind any or all changes and restore your terms and conditions of employment retroactively to July 1, 2013.

WE WILL, jointly and severally, make you whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment.

OXFORD ELECTRONICS, INC., D/B/A OXFORD AIRPORT TECHNICAL SERVICES

The Administrative Law Judge's decision can be found at www.nlr.gov/case/13-CA-115933 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with the International Union of Operating Engineers Local 399, AFL-CIO (IUOE Local 399) as the exclusive collective-bargaining representative of our employees who hold the positions of encoders and lead encoders in the following unit:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, working foremen, encoders, and lead encoders.

WE WILL NOT withdraw recognition from IUOE Local 399 as your exclusive collective-bargaining representative.

WE WILL NOT grant assistance to Transportation Workers Union of America—Local 504, AFL-CIO (TWU Local 504) or recognize it as your exclusive collective-bargaining representative at a time when TWU Local 504 does not represent an unassisted and uncoerced majority of the employees in the unit.

WE WILL NOT apply the terms and conditions of employment of the collective-bargaining agreement with TWU Local 504 (TWU contract), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to you at a time when TWU Local 504 does not represent an unassisted and uncoerced majority of employees in the unit.

WE WILL NOT change your terms and conditions of employment without first notifying IUOE Local 399 and giving it an opportunity to bargain.

WE WILL NOT discriminate against you in regard to your hire or tenure of employment in order to encourage membership in TWU Local 504.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL withdraw and withhold all recognition from TWU Local 504 as your exclusive collective-bargaining representative, unless and until TWU Local 504 has been certified by the National Labor Relations Board as your exclusive collective-bargaining representative.

WE WILL refrain from applying to you the terms and conditions of employment of a collective-bargaining agreement with TWU Local 504, including its union-security provisions.

WE WILL, jointly and severally, with TWU Local 504, reim-

burse you for all initiation fees, dues, and other moneys paid by you or withheld from your wages pursuant to the TWU contract, with interest.

WE WILL recognize and, on request, bargain at reasonable times and places and in good faith with IUOE Local 399 as the exclusive collective-bargaining representative of our employees in the described appropriate unit concerning wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed collective-bargaining agreement.

WE WILL notify IUOE Local 399 in writing of any changes made to your terms and conditions of employment on or after July 1, 2013, and WE WILL, on the request of IUOE Local 399, rescind any or all changes and restore your terms and conditions of employment retroactively to July 1, 2013.

WE WILL, jointly and severally, make you whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment.

OXFORD ELECTRONICS, INC., D/B/A OXFORD AIRPORT
TECHNICAL SERVICES

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APPENDIX C
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with the International Union of Operating Engineers Local 399, AFL-CIO (IUOE

Local 399) as the exclusive collective-bargaining representative of our employees who hold the positions of encoders and lead encoders in the following unit:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, working foremen, encoders, and lead encoders.

WE WILL NOT withdraw recognition from IUOE Local 399 as your exclusive collective-bargaining representative.

WE WILL NOT grant assistance to Transportation Workers Union of America—Local 504, AFL-CIO (TWU Local 504) or recognize it as your exclusive collective-bargaining representative at a time when TWU Local 504 does not represent an unassisted and uncoerced majority of the employees in the unit.

WE WILL NOT apply the terms and conditions of employment of the collective-bargaining agreement with TWU Local 504 (TWU contract), or any extensions, renewals, or modifications of that agreement, including its union-security provisions, to you at a time when TWU Local 504 does not represent an unassisted and uncoerced majority of employees in the unit.

WE WILL NOT change your terms and conditions of employment without first notifying IUOE Local 399 and giving it an opportunity to bargain.

WE WILL NOT discriminate against you in regard to your hire or tenure of employment in order to encourage membership in TWU Local 504.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL withdraw and withhold all recognition from TWU Local 504 as your exclusive collective-bargaining representative, unless and until TWU Local 504 has been certified by the National Labor Relations Board as your exclusive collective-bargaining representative.

WE WILL refrain from applying to you the terms and conditions of employment of a collective-bargaining agreement with TWU Local 504, including its union-security provisions.

WE WILL, jointly and severally, with TWU Local 504, reimburse you for all initiation fees, dues, and other moneys paid by you or withheld from your wages pursuant to the TWU contract, with interest.

WE WILL recognize and, on request, bargain at reasonable times and places and in good faith with IUOE Local 399 as the exclusive collective-bargaining representative of our employees in the described appropriate unit concerning wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed collective-bargaining agreement.

WE WILL notify IUOE Local 399 in writing of any changes

made to your terms and conditions of employment on or after July 1, 2013, and WE WILL, on the request of IOUE Local 399, rescind any or all changes and restore your terms and conditions of employment retroactively to July 1, 2013.

WE WILL, jointly and severally, make you whole, with interest, for any losses sustained due to our unlawfully imposed changes in wages, hours, benefits, and other terms and conditions of employment.

OXFORD ELECTRONICS, INC., D/B/A OXFORD AIRPORT TECHNICAL SERVICES

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APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT accept assistance or recognition from Oxford Electronics, Inc., d/b/a Oxford Airport Technical Services, Worldwide Flight Services, Inc., Total Facility Maintenance, Inc., or Twin Staffing Inc. as your exclusive collective-bargaining representative at a time when we do not represent an

uncoerced majority of the employees of Respondents Oxford, Worldwide, Total, or Twin in the following unit:

all employees engaged in the following operations: maintaining and monitoring all conveyors and associated components of the baggage handling system, operating or assisting in operating all heating, ventilating, and air-conditioning equipment (HVAC), engines, turbines, motors, combustion engines, pumps, air compressors, ice and refrigerating machines, fans, siphons, also automatic and power-oiling pumps and engines, operating or assisting in operating, maintaining all instrumentation and appurtenances utilizing energy from nuclear fission or fusion and its products; such as radioactive isotopes; also referred to as dispatchers, lead dispatchers, mechanics, senior mechanics, lead mechanics, helpers, working foremen, encoders, and lead encoders.

WE WILL NOT maintain or enforce our collective-bargaining agreement with Worldwide Flight Services, Inc. (TWU contract), or any extensions, renewals, or modifications of that contract, including its union-security provisions, so as to cover you.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL decline recognition as the exclusive collective-bargaining representative of the employees of Respondents Oxford, Worldwide, Total, and Twin in the unit.

WE WILL, jointly and severally with Respondents Oxford, Worldwide, Total and Twin, reimburse all present and former employees in the unit described above for all initiation fees, dues, and other moneys paid by them or withheld from their wages pursuant to the TWU contract, with interest.

TRANSPORTATION WORKERS UNION OF AMERICA—
LOCAL 504, AFL-CIO

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